| | |
|---|---|
| Judicial Internships/ Externships | **No** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Hallett, Nicole
nhallett@uchicago.edu
773-702-9611
Huq, Aziz
huq@uchicago.edu
773-702-9566

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Brantley Butcher
5454 S. Shore Dr., Apt. 424
Chicago, IL 60615
brantleybutcher@uchicago.edu
(765) 639-5993

June 12, 2023

The Honorable Juan R. Sanchez
United States District Judge
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

I am a rising third-year law student at the University of Chicago Law School. I write to apply for a clerkship in your chambers for the 2024–2025 term.

By serving as a judicial law clerk, I hope to hone the research and writing skills I have developed before and during law school. Before law school I worked as an editor at a pharmaceutical marketing agency, where I was promoted early to a managerial role in the editorial department. In law school I have written briefs filed in the Seventh Circuit through the Immigrants' Rights Clinic, edited my peers' work as a Comments Editor on *The University of Chicago Law Review*, and presented oral argument on a brief I wrote as a semifinalist in the Hinton Moot Court. During my law school summers, I have prepared research memoranda both as an intern in the Civil Fraud Section of the Department of Justice and as a summer associate at Jenner & Block in Washington, DC. Clerking in your chambers would allow me to build on these skills while deepening my knowledge of federal procedure and the federal courts.

A resume, transcript, and writing sample are enclosed. Letters of recommendation from Professors Nicole Hallett and Aziz Huq will arrive under separate cover. Should you require additional information, please do not hesitate to reach out. Thank you for your consideration.

Sincerely,

/s/ Brantley Butcher

# Brantley Butcher

brantleybutcher@uchicago.edu | (765) 639-5993 | 5454 S. Shore Dr., Apt. 424 | Chicago, IL 60615

## Education

**The University of Chicago Law School** | Chicago, IL June 2024
*Juris Doctor Candidate*

| | |
|---|---|
| Journal: | *The University of Chicago Law Review*, Comments Editor |
| Moot Courts: | Hinton Moot Court, Semifinalist; Jessup International Law Moot Court |
| Award: | Thomas R. Mulroy Prize for Excellence in Appellate Advocacy (awarded to top fourteen participants after the first round of the Hinton Moot Court) |
| Activities: | OutLaw, Treasurer; Environmental Law Society, Events Coordinator; Orientation Leader |

**Yale University** | New Haven, CT May 2019
*Bachelor of Science in Chemistry*

| | |
|---|---|
| Award: | Summer Ambassador 2017 (designed, won funding for, and carried out a service project that delivered food to families experiencing food insecurity in rural Indiana) |
| Activities: | Teaching Assistant, General Chemistry; Business Manager, *The Politic*; Co-President, Undergraduate Council at St. Thomas More (Yale's Catholic Center) |

## Experience

**Jenner & Block LLP** | Washington, DC May 2023–July 2023
*Summer Associate*

**The University of Chicago Law School, Immigrants' Rights Clinic** | Chicago, IL Sept. 2022–Present
*Student Attorney*

- Researched and wrote briefs filed in the Seventh Circuit challenging a noncitizen's removability.
- Interviewed noncitizen family and submitted asylum and green card applications on their behalf.
- Provided legal guidance on FOIA applications, green card renewal, naturalization, and international travel to noncitizen members of Centro de Trabajadores Unidos, a Chicago labor organizing group.

**The University of Chicago Law School, Professor Hajin Kim** | Chicago, IL June 2022–Sept. 2022
*Research Assistant (part time)*

- Reviewed motions from mass tort cases that ended in settlement to gather data on how the framing of settlement values affects the settlement amount plaintiffs received.

**Department of Justice, Civil Division** | Washington, DC May 2022–July 2022
*Commercial Litigation Branch, Fraud Section Intern*

- Researched and wrote legal memoranda for cases involving Medicare, medical procurement, and defense procurement fraud litigated under the False Claims Act.
- Observed depositions and an investigative interview and attended litigation strategy meetings.
- Reviewed a draft response to a motion to dismiss and suggested edits.

**Communication Partners Group** | New York, NY Oct. 2019–July 2021
*Medical Associate Editor* (Aug. 2020–July 2021)
*Medical Editorial Assistant* (Oct. 2019–Aug. 2020)

- Fact-checked, copyedited, proofread, and wrote copy for scientifically technical promotional materials created for client biotech and pharmaceutical companies.
- Promoted early to managerial role. Managed and trained a newly hired editorial assistant.

**Fahe** | Lexington, KY May 2018–Aug. 2018
*Policy and Membership Intern*

- Researched and wrote memoranda on the economic impact of the opioid epidemic, treatments for opioid addiction, and access to rural healthcare for a nonprofit that fights poverty in Appalachia.

## Interests

Tennis, science fiction novels/movies, hiking national parks, cooking, and juggling

THE UNIVERSITY OF CHICAGO

**Name:** Brantley Allan Butcher
**Student ID:** 12335003

## University of Chicago Law School

### Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Current Status: Active in Program
J.D. in Law

### External Education

Yale University
New Haven, Connecticut
Bachelor of Science 2019

### Beginning of Law School Record

Autumn 2021

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 30101 | Elements of the Law<br>William Baude | 3 | 3 | 177 |
| LAWS | 30211 | Civil Procedure<br>Diane Wood | 4 | 4 | 177 |
| LAWS | 30611 | Torts<br>Saul Levmore | 4 | 4 | 177 |
| LAWS | 30711 | Legal Research and Writing<br>Aneil Kovvali | 1 | 1 | 180 |

Winter 2022

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 30311 | Criminal Law<br>Jonathan Masur | 4 | 4 | 180 |
| LAWS | 30411 | Property<br>Aziz Huq | 4 | 4 | 178 |
| LAWS | 30511 | Contracts<br>Douglas Baird | 4 | 4 | 178 |
| LAWS | 30711 | Legal Research and Writing<br>Aneil Kovvali | 1 | 1 | 180 |

Spring 2022

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 30712 | Legal Research, Writing, and Advocacy<br>Aneil Kovvali | 2 | 2 | 182 |
| LAWS | 30713 | Transactional Lawyering<br>David A Weisbach | 3 | 3 | 182 |
| LAWS | 40301 | Constitutional Law III: Equal Protection and Substantive Due Process<br>Aziz Huq | 3 | 3 | 179 |
| LAWS | 43368 | Legal History of the Founding Era<br>Farah Peterson | 3 | 3 | 180 |
| LAWS | 44201 | Legislation and Statutory Interpretation<br>Farah Peterson | 3 | 3 | 180 |

Autumn 2022

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 43200 | Immigration Law<br>Amber Hallett | 3 | 3 | 182 |
| LAWS | 43228 | Local Government Law<br>Lee Fennell | 3 | 3 | 179 |
| LAWS | 43246 | Health Law and Policy<br>Jack Bierig | 3 | 3 | 178 |
| LAWS | 90211 | Immigrants' Rights Clinic<br>Amber Hallett | 2 | 0 | |
| LAWS | 95030 | Moot Court Boot Camp<br>Rebecca Horwitz<br>Madeline Lansky | 2 | 2 | P |

Honors/Awards
The Thomas R. Mulroy Prize, for excellence in appellate advocacy and oral argument in the Hinton Moot Court Competition

Winter 2023

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 40101 | Constitutional Law I: Governmental Structure<br>David A Strauss | 3 | 3 | 176 |
| LAWS | 40201 | Constitutional Law II: Freedom of Speech<br>Genevieve Lakier | 3 | 3 | 177 |
| LAWS | 52003 | Judicial Opinion Writing<br>Robert Hochman<br>Gary Feinerman | 3 | 3 | 179 |
| LAWS | 90211 | Immigrants' Rights Clinic<br>Amber Hallett | 2 | 0 | |
| LAWS | 94110 | The University of Chicago Law Review<br>Anthony Casey | 2 | 2 | P |
| LAWS | 95020 | Hinton Moot Court Competition<br>Anup Malani<br>Sarah Konsky<br>Hajin Kim | 0 | 0 | P |



Date Issued: 06/11/2023

THE UNIVERSITY OF CHICAGO

**Name:** Brantley Allan Butcher
**Student ID:** 12335003

## University of Chicago Law School

Spring 2023

| Course | | Description | Attempted | Earned | Grade |
|---|---|---|---|---|---|
| LAWS | 41601 | Evidence<br>John Rappaport | 3 | 3 | 177 |
| LAWS | 46001 | Environmental Law: Air, Water, and Animals<br>Hajin Kim | 3 | 3 | 178 |
| LAWS | 53425 | Constitutionalism After AI<br>Aziz Huq | 3 | 3 | 183 |
| LAWS | 90211 | Immigrants' Rights Clinic<br>Amber Hallett | 2 | 0 | |
| LAWS | 94110 | The University of Chicago Law Review | 1 | 1 | P |
| Req Designation: | | Meets Substantial Research Paper Requirement<br>Anthony Casey | | | |

**End of University of Chicago Law School**

THE UNIVERSITY OF CHICAGO

## Key to Transcripts of Academic Records

**1. Accreditation:** The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit http://csl.uchicago.edu/policies/disclosures.

**2. Calendar & Status:** The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

**3. Course Information:** Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

**4. Credits:** The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

**5. Grading Systems:**

**Quality Grades**

| Grade | College & Graduate | Business | Law |
|---|---|---|---|
| A+ | 4.0 | 4.33 | |
| A | 4.0 | 4.0 | 186-180 |
| A- | 3.7 | 3.67 | |
| B+ | 3.3 | 3.33 | |
| B | 3.0 | 3.0 | 179-174 |
| B- | 2.7 | 2.67 | |
| C+ | 2.3 | 2.33 | |
| C | 2.0 | 2.0 | 173-168 |
| C- | 1.7 | 1.67 | |
| D+ | 1.3 | 1.33 | |
| D | 1 | 1 | 167-160 |
| F | 0 | 0 | 159-155 |

**Non-Quality Grades**

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass** (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation

**Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

**Examination Grades**

- H Honors Quality
- P* High Pass
- P Pass

**Grade Point Average:** Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: http://registrar.uchicago.edu.

**6. Academic Status and Program of Study:** The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

**7. Doctoral Residence Status:** Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

**Scholastic Residence:** the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

**Research Residence:** the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

**Advanced Residence:** the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

**Active File Status:** a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

**Doctoral Leave of Absence:** the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

**Extended Residence:** the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled Pro Forma does not extend the maximum year limit on registration.

**8. Law School Transcript Key:** The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

**9. FERPA Re-Disclosure Notice:** In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:
http://registrar.uchicago.edu.

Revised 09/2016

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

1111 East 60th Street | Chicago, Illinois 60637
PHONE 773-702.9611 | FAX 773-702-2063
E-MAIL nhallett@uchicago.edu
www.law.uchicago.edu

Nicole Hallett
*Clinical Professor of Law*

May 31, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

**Re: Brantley Butcher Clerkship Application**

Dear Chief Judge Sanchez:

I write to recommend Brantley Butcher for a clerkship in your chambers. I direct the Immigrants' Rights Clinic (IRC) at the University of Chicago Law School. IRC is an experiential course that enrolls eight to ten students per year. I meet with each student individually multiple times each quarter and meet with small student teams each week in addition to the weekly seminar. I also review and provide feedback on many drafts of work product throughout the year and observe and supervise fieldwork events such as client meetings and court appearances. Therefore, I get to know my clinic students very well and have the opportunity to observe them in many different contexts. Brantley joined IRC in September 2022 and I have worked with him for three consecutive quarters. Based on my experience, I believe Brantley will make a superb law clerk.

Brantley has worked on two cases this year, each of which has been challenging and complicated. In the first case, we represent a non-citizen with a final order of removal in a petition for review at the Seventh Circuit. The legal issue concerns the modified categorical approach and has required the students to learn an extremely complex and at times bewildering area of law in addition to understanding the state criminal offense underlying the issue. Brantley has taken the lead on both the principal and reply briefs. Although there are four students working on the case, I have observed that it is Brantley doing the lion's share of the work, His legal research skills have been second to none, and his legal writing skills are already highly developed and have only improved over the course of the year. In addition to writing the arguments I had identified, Brantley developed a novel legal argument that I had not identified based on his comprehensive review of the case law. Brantley was able to work through some potential problems with our arguments over long discussions in our team meetings. He was able to express his reservations about certain arguments succinctly and persuasively. Although oral argument has not been scheduled in the case yet, I plan to ask Brantley to do it given his leading role on the briefs and his prior experience with moot court.

In his other case, we represent a family of Afghans who were evacuated from Afghanistan during the U.S. withdrawal and are now applying for asylum and a special immigrant visa. On this case, I saw a different side of Brantley – his ability to develop trust client relationships, his attention to detail, and his ability to manage and juggle many competing tasks. While the other students on the team focused either on the Seventh Circuit brief or the asylum case, Brantley took a leading role on both. Last week, he called me while I was driving back from a speaking engagement. It was Friday evening and the students had aimed to get the special immigrant applications filed that week. Brantley was in the clinic, finishing up the applications by himself. He had a detailed list of questions that illustrated the immense care he had put into the project.

In sum, Brantley has many talents (as you can see not only from this letter but from the excellent grades Brantley has earned during his law school career). He is an excellent writer and an excellent teammate. He can navigate complex legal arguments in addition to handling the mundane details that are so important in the practice of law and in judicial chambers. I have no doubt that as a law clerk, you would be able to trust him to do a thorough and capable job drafting bench memos and opinions, in addition to all of the other tasks a law clerk must take on.

On a personal level, Brantley is a kind, gentle person who, if anything, cares too much about doing right by his clients, teammates, and supervisors. He is from Indiana (as am I), and I recognize in him a certain Midwestern humility that allows him to excel at what he does without coming across as arrogant or self-satisfied. Brantley is always thinking about how he can improve, how he can do more, how he can be helpful. If I were a judge, I would want to have Brantley in my chambers, and I do not say that about all of my students. Brantley is special and I look forward to seeing what he does in his career. I hope the first step can be a clerkship working for you. I would be happy to speak more about Brantley if it would be helpful to your decision. You can call me at 203-910-1980 or email me at nhallett@uchicago.edu.

Sincerely,

Nicole Hallett
Clinical Professor of Law
University of Chicago Law School

NH/z

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law
University of Chicago Law School
1111 East 60th Street | Chicago, Illinois 60637
phone 773-702-9566 | fax 773-702-0730
email huq@uchicago.edu
www.law.uchicago.edu

May 31, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Brantley Butcher (University of Chicago Class of 2024), as a law clerk in your chambers. In the academic year 2021-22, I taught Brantley in a mandatory 1L course on Property and an elective 1L course on Constitutional Law (Equality and Due Process). He did very well in both of those classes. Brantley is further enrolled in a seminar I am teaching this term, which is entitled Constitutionalism after AI. To date, he has offered a very strong set of writings and oral contributions to that class. Brantley's very strong performance in my classes is consistent with a larger record of impressive performances across the law school curriculum across the first 18 months of his law school career. It was thus predictable that Brantley would earn a place on the prestigious University of Chicago Law Review, where he has gone on to a managerial role in his second year on the journal. My interactions with Brantley, in addition to his performance in my classes (both on the exam and also in person), strongly suggest that he will be a terrific law-clerk: He is poised, thoughtful, and analytically sharp. In person, he is respectful, but fulsome in his deployment of his formidable analytic resources. I think that any chambers would be rendered more effective, and more intellectually rich, thanks to Brantley's presence. I think would be true for both a district court position and an appellate position. I hence recommend him, without any hesitation, for those roles upon his graduation from the law school.

I will focus first on Brantley's academic performance, taking account of both how he did in my classes and also offering a perspective on his transcript as a whole. As noted, those two 1L classes were Property and Constitutional Law: Equal Protection and Due Process. They are very different in scope and focus. The first is a largely common-law class with a hefty dose of economics and political theory (e.g., Locke and Nozick). The second involves a great deal of history, and focuses on the way in which different moments in constitutional and political history have shaped the selection of controversies and the nature of the doctrinal rules that eventually emerge. The two classes, that is, are very different: They require somewhat different skill sets to excel. Yet in both classes, Brantley obtained a very high "B." In an era of grade inflation generally, this performance will not sound like much—but I want to stress without reservation that these are impressive grades. They place him within the top 15-20% or so each class. And they demonstrate more than enough legal skill to not just manage but to thrive in a federal clerkship. I looked back at Brantley's exams and found them well-written and clear: They suggest that he is a strong writer, even under considerable time pressures.

More generally, Brantley has offered as good or better a performance in almost all his other courses, with his grades getting better across the arc of his first year at the law school. Hence, Brantley has obtained very strong grades in classes as diverse as Transactional Lawyering. Immigration Law, Criminal Law, and Legal History (the Founding Period). This broad range of strong performances suggest that Brantley is not just intellectually capable, but also very nimble: He is able to move between very different topics and still grasp the essentials quickly. Indeed, it is telling that I am able to write a very strong recommendation for Brantley, and I am not even the person who gave him the best grades.

Brantley's grades, moreover, should be understood in the general context of Chicago assessment modalities. Unlike many other law schools, Chicago abjures grade inflation in favor of a very strict curve round a median score of 177 (which is a B in our argot). There is not large movement from the median. Because Chicago grades on a normal distribution, and because it is on the quarter system, it is possible to be very precise about where a student falls in a class as a whole. This is simply not possible with a grading system of the kind used by some of our peer schools, which are seemingly designed to render ambiguous and inscrutable differences between the second tier of students and the third- and fourth-tiers. In Chicago's reticulated grading system, Brantley's scores should be seen as very good ones. They demonstrate not just his deep legal skills, but his strength in comparison to his peers.

At Chicago more generally, Brantley has thrived. As I noted, he has obtained a place on the University of Chicago Law Review, where he is managing now the drafting and publication of comment (or notes) by other students. He also gave an excellent performance in the recent school-wide moot court, and he has participated in the interschool Jessup International Law Moot Court. In addition, he is an active member of both Outlaws and the Environmental Law Society. It is clear both from his record, and my sense of his presence around the law school, that Brantley is both engaged and well-respected by his peers. It is also clear to me that he is leaving the law school a better place than when he arrived.

On the personal side, Brantley is affable and a pleasure to chat with. It is no wonder he is so well liked. In part, Brantley's

character reflects his early life in an economically depressed area of rural Indiana, where dismaying few went to university after high school—let alone making it to an Ivy League school such as Yale. Brantley has maintained a soft-spoken humility (perhaps one that comes of switching from modest circumstances to the wealth and privilege of Yale), and has kept his eyes on the goal of continuing to contribute to his nation, and his community, through the law. This background also instilled an ethic of hard work in him: He had to study on his own for many early exams, including the SATs, the ACTs, and AP classes. He also faced the challenge of coming out in a deeply conservative culture, and then of reconciling his sexuality with his deeply felt Catholicism.

Finally, Brantley is in the process of accruing much useful legal experience that will be directly relevant to effective performance in a federal clerkship. Last summer, he worked at the Department of Justice's Civil Rights Division in Washington, DC. And this summer, he will be in Jenner and Block's Washington office. I anticipate that he will do very well in that position, and that he would come to federal clerkship with some practical legal skills already developed. I anticipate that he will go on to be either a judge or else find a path in public service of one sort or another after paying off his law-school loans.

Based on all this evidence, I anticipate that Brantley will perform very well in the demanding circumstances of a federal clerkship. I am very happy to offer my unqualified support for his application. Of course, I would be more than happy to answer any questions you have, and can be reached at your disposal at huq@uchicago.edu (and 703 702 9566).

Sincerely,

Aziz Huq
Frank and Bernice J. Greenberg Professor of Law

## Writing Sample

I prepared this brief for the spring quarter of my Legal Research and Writing class at the University of Chicago Law School. For this assignment I represented appellant Danny Midway, who is appealing to the Seventh Circuit a holding by the district court that he lacks Article III standing. The assignment required independent research into the relevant case law. This writing sample represents my independent work. I did not receive editing help on the preliminary draft, submitted draft, or the version I submit to you today.

## STATEMENT OF ISSUES

1. Whether the district court erred when it held Datavault's data breach, which exposed Danny Midway's social security number, credit card information, and other personal information to hackers, did not result in an injury in fact sufficient for Article III standing.

2. Whether Datavault's data breach caused judicially redressable injuries sufficient for Article III standing.

## STATEMENT OF THE CASE

### I. Statement of Facts

### A. Datavault Failed to Protect Users' Sensitive Information from Hackers.

Davidson Datavault, LLC provides users with a digital vault to store usernames, passwords, and personal data. R3. Datavault markets itself as a service that protects customer privacy in a world plagued by online fraud and data breaches. *Id.*

To access the digital vault, users create a username and password. *Id.* Datavault creates an internal ID for each user. *Id.* The internal ID contains the user's first name, last name, and social security number. *Id.* Datavault also stores an encrypted version of users' vault password. R4. The encryption technology is the same used by Kovvali Industries in 2013 when it was hacked; researchers studying the hack could decrypt the stolen Kovvali Industries passwords in under two hours. R1 n.1.

To run its website, Datavault uses Shaffer Software. R5. On September 1, 2020, the Department of Homeland Security provided notice that Shaffer Software had a security vulnerability and that all users should immediately update to the latest version. R4. Datavault failed to update the software until October 1, 2020. R5.

Datavault's delay permitted hackers to exploit the vulnerability with an Alison Attack. *Id.* Hackers stole all Datavault users' internal IDs and encrypted vault passwords. *Id.* The hackers also downloaded the digital vaults. *Id.*

**B. Datavault's Data Breach Led to Financial and Emotional Harms for Danny Midway.**

Danny Midway is a recent college graduate and small business owner. R2. His small business sells collegiate apparel online and relies on bulk purchasing on credit to meet customers' demands. *Id.* Because credit and an online presence are vital to Midway's business, he used Datavault to protect and manage his credit card and password information. *Id.*

Datavault's data breach in September 2020 led to the theft of Midway's Datavault digital vault, which contained usernames and passwords for all his business's social media accounts, online storefronts, and finances; Midway's Datavault internal ID, which contained his social security number and full name; and Midway's encrypted Datavault password, which could be unencrypted with known methods. R5.

Midway is a previous victim of credit card fraud and thus knew what to do to prevent subsequent fraud and identity theft. R8. Midway accepted Datavault's offer of one year of free credit monitoring and identity theft services. R6. Midway also monitored his financial accounts every day and spent ten hours changing his passwords. *Id.* Because his business ran on tight margins that fraud or identity theft could threaten, Midway cancelled his credit card and placed a security freeze on his credit report. R6–8.

These measures to prevent harm after Datavault's data breach had deleterious consequences for Midway's business. Without a credit card and unable to open a new one due to the credit freeze, Midway could not obtain the inventory he needed to meet customer demand. R7. From October through November, Midway could only fulfill 100 out of 4,000 orders; he had

to cancel the remaining 3,900 orders. *Id.* Midway opened a new credit card in December 2020, but by that point the financial damage from the lost 3,900 orders had been done. *Id.*

The financial effects of Datavault's data breach and fear of identity theft led to substantial emotional distress. *Id.* The data breach exacerbated the anxiety from which Midway already suffered; he spent several sessions discussing the additional stress with his therapist. R8. The anxiety from Datavault's data breach also led to insomnia and trouble focusing on his work. *Id.*

**II. Proceedings Below**

Midway filed suit against Datavault on March 1, 2021, asserting claims of negligence and implied breach of contract. R8. Midway argued that due to the data breach, he (i) has an increased risk of identity theft and fraudulent credit charges; (ii) incurred costs to monitor and alter his financial accounts, including costs to his business; and (iii) suffered from emotional distress. R9–10. Midway argued any and all of these harms were an injury in fact. R10.

Datavault argued Midway lacked Article III standing, and the district court agreed. R9. The trial court only examined the requirement for injury in fact and held Midway's harms were insufficient. *Id.* The district court held Midway had failed to allege that he or any other Datavault user had experienced "fraudulent charge[s] or other symptoms of identity theft" following the breach. R11. The district court held that without evidence of fraud, Midway did not show a substantial risk of harm and could not manufacture standing through incurring protective costs. *Id.*

The district court granted Datavault's motion to dismiss under Rule 12(b)(1), dismissed Midway's complaint without prejudice, and entered judgment in favor of Datavault. *Id.* This timely appeal followed.

## SUMMARY OF THE ARGUMENT

The district court erred when it dismissed Midway's suit for lack of standing due to lack of injury in fact. Midway's three alleged harms are all injuries in fact.

The first harm, an increased risk of identity theft and fraudulent credit charges, has precedential support as an injury in fact. This Court has previously held that hacks by their nature increase the risk of fraud and identity theft, and this increased risk is an injury in fact. Based on this precedent, this Court should reverse the district court's holding that Midway's increased risk of harm from the data breach was insufficient for standing.

The second harm, Midway's incurred costs to monitor and alter his financial accounts, including costs to his business, also has precedential support as an injury in fact. The record indicates harm was imminent, and this Court has held that money and time spent protecting oneself against imminent harm is an injury in fact.

The third harm, emotional distress, is also an injury in fact. While minor emotional distress is not an injury in fact, physical manifestations of emotional distress and medical diagnoses arising from emotional distress are injuries in fact. Midway experienced physical manifestations of stress from the data breach and required additional medical treatment due to stress, both of which are injuries sufficient for Article III standing.

While the district court did not address causation and judicial redressability, both are met based on the facts provided. Midway thus has Article III standing, and this case should be remanded to the district court for proceedings on the merits.

## ARGUMENT

### I. Standard of Review

This Court reviews dismissals for lack of Article III standing *de novo*. *Remijas v. Neiman Marcus Group, LLC*, 749 F.3d 688, 691 (7th Cir. 2015).

### II. The District Court Erred When It Held Midway Lacked Article III Standing.

The Supreme Court has established three requirements to show standing: "(i) that [the plaintiff] suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion, LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

The district court applied the correct standard but improperly interpreted the requirements for injury in fact. Because injury in fact is the only factor the district court examined, this brief will focus on showing that Midway's injuries granted him Article III standing. Causation and redressability were also met and will be briefly addressed, but any remaining substantial questions should be remanded to the district court for further consideration.

### III. Datavault's Data Breach Created Injury in Fact for Midway Through Increased Risk of Fraud and Identity Theft, the Cost of Protective Measures, and Emotional Damage.

The district court improperly dismissed the injuries in fact that Datavault inflicted on Midway. Midway's harms from Datavault's data breach included (i) an increased risk of identity theft and fraudulent credit charges; (ii) costs to monitor and alter his financial accounts, including costs to his business; and (iii) emotional distress. This Court in previous cases has acknowledged all three of these harms as injuries in fact.

**A. Midway Experienced an Increased Risk of Identity Theft and Fraudulent Credit Card Charges, Which This Court Has Recognized as an Injury in Fact.**

**1. Hacks by Their Nature Create Increased Risks of Fraud and Identity Theft.**

This Court's leading data breach case *Remijas v. Neiman Marcus*, 749 F.3d 688 (7th Cir. 2015) established that an increased risk of credit card fraud and identity theft is an injury in fact. In *Remijas* a class of shoppers whose credit card information was potentially exposed in a hack of Neiman Marcus sued the retailer for damages arising from exposure of their private information. *Id.* at 690. Even though only a small fraction of the class had experienced fraudulent charges, this Court held that an increased risk of fraudulent charges and identity theft were injuries in fact sufficient for Article III standing for the entire class. *Id.* at 690, 692.

The *Remijas* court cited *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013) in its holding. The Supreme Court in *Clapper* held that future harms can be injuries in fact if they are "certainly impending" as opposed to mere "allegations of possible future injury." *Remijas*, 749 F.3d at 692 (citing *Clapper*, 568 U.S. at 409). However, the Supreme Court in *Clapper* explicitly rejected that "certainly impending" means "literally certain"; it can also mean "a 'substantial risk' that harm will occur." *Id.* at 693 (quoting *Clapper*, 568 U.S. at 414 n. 5).

This circuit in *Remijas* found that hacks by their nature create this substantial risk. This Court wrote, "Why else would hackers break into a store's database and steal consumers' private information? Presumably the purpose of the hack is, sooner or later, to make fraudulent charges or assume those consumers' identities." *Id.* at 693. It worried that forcing plaintiffs to wait until fraud or theft occurs would make proving the causal relationship to the hack difficult, which would protect negligent defendants. *Id.* (citing *In re Adobe Sys.*, 66 F.Supp.3d 1197, 1215 n. 5 (N.D. Cal. 2014)).

This previous holding that hacks by their nature create an injury in fact shows that the district court erred when it held Midway's increased risks of identity theft and fraud were not injuries in fact. Hackers stole Midway's sensitive information from Datavault. Like in *Remijas*, an assumption should be made that the Datavault hackers stole Midway's information with the intent of committing fraud or identity theft. *Id.* at 690. The nature-of-a-hack reasoning from *Remijas* pushes the increased risks of fraud or identity theft from "allegations of possible future harm" to "certainly impending" harms, which are injuries in fact for Article III standing. *Id.* at 692 (citing *Clapper*, 568 U.S. at 409).

Indeed, Datavault's data breach is even more likely to create impending harm than the breach in *Remijas*. The Datavault hackers targeted a company that primarily holds sensitive information. As this Court wrote, hackers only steal information they plan to misuse. *Id.* at 690. While the password to access Midway's data vault is encrypted, hackers sophisticated enough to launch this type of hack will be sophisticated enough to unencrypt passwords. *See* R1 n.1 (unencrypting passwords encrypted with the same technology Datavault uses only took two hours). Thus, Midway has a substantially increased risk of experiencing credit card fraud and identity theft from Datavault's data breach, which is an injury in fact for Article III standing.

**2. The District Court Improperly Applied the Standard from *Remijas*.**

The district court in this case erred when it failed to apply the proper standard from *Remijas*. Instead of the controlling standard from *Remijas*, the district court relied upon a rule improperly crafted in the nonbinding case *Kylie S. v. Pearson PLC*, 475 F.Supp.3d 841 (N.D. Ill. 2020). R10.

The district court in *Kylie* improperly created a rigid rule from the more liberal *Remijas* standard. The *Kylie* court derived two factors from *Remijas* for determining if there is a material

threat of identity theft: "(i) the sensitivity of the data in question . . . and (ii) the incidence of fraudulent charges and other symptoms of identity theft." R10 (citing *Kylie*, 475 F.Supp.3d at 846). While *Kylie* cites *Remijas*, the *Remijas* court did not create the rigid rule espoused in *Kylie*. Instead, it created a liberal standard based on the nature of a hack. *See Remijas*, 749 F.3d at 693. The rigid rule should not have been created in *Kylie* and should not have been applied to Midway's injuries.

But even if this circuit embraces the *Kylie* rule, Midway still experienced an injury in fact. The *Kylie* rule only addresses an increased risk of identity theft, not credit card fraud. *See Kylie*, 475 F.Supp.3d at 846 ("Whether a data breach exposes consumers to a material threat of *identity theft* turns on two factors that derive from *Remijas*") (emphasis added). Due to material differences in credit card fraud and identity theft (e.g., credit card fraud is easier to commit), the rule from *Kylie* does not prevent an increased risk of credit card fraud from constituting an injury in fact.

**3. *TransUnion* and *Pierre* Do Not Apply to Cases Like Midway's Where There Are Concrete and Ongoing Risks Created by a Data Breach.**

The Supreme Court case *TransUnion, LLC v. Ramirez*, 141 S. Ct. 2190 (2021) does not foreclose standing for Midway. The plaintiffs in *TransUnion* alleged risks that were purely hypothetical, which are fundamentally different from the concrete risks Midway alleges. For this reason, the holding from *TransUnion* does not control in Midway's case.

In *TransUnion* a class sued a credit reporting agency for incorrectly identifying individuals as "specially designated nationals" on credit reports, a designation that prevented class members from receiving credit. *TransUnion*, 141 S. Ct. at 2201–02. The class consisted of those whose incorrect credit reports had been sent to third parties and those whose incorrect credit reports had not been sent to third parties. *Id.* at 2202. The Court held that only those whose

incorrect reports had been sent to third parties had standing. *Id.* at 2209. Those whose incorrect reports had not been sent to third parties did not have standing because they could not show a concrete injury in fact. *Id.* at 2212.

The plaintiffs in *TransUnion* alleged only hypothetical harms, which are different from the concrete and ongoing harms that Midway alleges. In *TransUnion*, TransUnion either harmed or did not harm plaintiffs: incorrect reports were either sent or not sent. TransUnion also corrected its error, creating no risk of future harm for those whose reports had not been sent. *Id.* at 2202. Midway's injury is different. Midway's private information—his social security number, credit card information, and passwords—were stolen. Once private information becomes public, it cannot become private again. Unlike TransUnion in *TransUnion*, Datavault created a real and ongoing risk of fraud or theft for Midway that cannot be corrected. Because Midway's injury is concrete and not purely hypothetical, *TransUnion* is inapplicable.

For similar reasons *Pierre v. Midland Credit Management*, *Inc.*, 29 F.4th 934 (7th Cir. 2022) does not jeopardize Midway's standing. This Court in *Pierre*, relying on *TransUnion*, held that plaintiffs did not experience a concrete injury based solely on the risk that those in the class could have been tricked by a letter. *Pierre*, 29 F.4th at 937. The risk in *Pierre* was a purely hypothetical harm like the harm alleged in *TransUnion*. This hypothetical injury in *Pierre* is fundamentally different from the concrete risk of fraud and identity theft that Midway experiences. Thus, this Court's holding in *Pierre* is inapplicable to Midway's case.

**B. Datavault's Data Breach Led Midway to Incur Costs to Monitor and Alter His Financial Accounts to Prevent Imminent Injury, Which Is an Injury in Fact.**

**1. This Court's Precedent Shows that Credit Monitoring, Changing Passwords, Cancelling Credit Cards, and Freezing Credit Reports Are Injuries in Fact.**

This Court has held that actions undertaken to protect oneself from identity theft and fraud can constitute injuries in fact. While "plaintiffs 'cannot manufacture standing by incurring

costs in anticipation of non-imminent harm,'" *Remijas*, 794 F.3d at 694 (quoting *Clapper*, 568 U.S. at 1155), not all actions taken to protect oneself against further harm are manufactured harms. Actions taken to prevent or ameliorate an imminent harm are different from actions taken when harm is only speculative. *Id.*; *see also Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 967 (7th Cir. 2016). In *Remijas* Neiman Marcus's offer of credit monitoring and identity-theft protection after its breach showed a need for these services, and the need showed the harm was imminent and nonspeculative. *Remijas*, 794 F.3d at 694. Because the harm was imminent, actions taken by Neiman Marcus shoppers to prevent the harm, such as paying for credit monitoring services, "easily qualified as a concrete injury." *Id*.

Midway and Datavault took several of the same protective measures as the plaintiffs and defendant in *Remijas*. After the data breach, Datavault offered free credit monitoring and identity fraud protection. Like in *Remijas*, this Court should interpret this action as recognition of a need for the services, which is also a recognition of an imminent, nonspeculative harm. *Id.* at 694; *Lewert*, 819 F.3d at 967. Because Midway's harm after Datavault's data breach was imminent, actions he took to protect himself from the harm are injuries in fact. Thus, the time Midway spent monitoring credit reports, changing passwords, cancelling credit cards, and freezing his credit report constitutes an injury in fact. *See Remijas*, 794 F.3d at 694; *Lewert*, 819 F.3d at 967.

**2. Financial Harm to Midway's Business Created an Injury in Fact.**

The Supreme Court in *TransUnion* found that financial harm is an injury in fact. In *TransUnion* the Supreme Court wrote that harms can be concrete injuries in fact if there is a "close relationship" to a harm "traditionally" recognized as providing a basis for a lawsuit. *TransUnion*, 141 S. Ct. at 2204 (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)). However, the harm does not have to be an exact historical duplicate. *Id.* One of these traditional

harms that the court recognized as a concrete injury in fact was "physical or monetary injury to the plaintiff." *Id.*

The business harm Midway experienced from Datavault's data breach is a financial harm, which is an injury in fact under *TransUnion*. After the data breach, Midway froze his business's credit line to prevent fraudulent charges. But this action also prevented Midway from purchasing on credit needed inventory to make sales, which created a financial harm. Midway's financial harm was a direct result of protective measures he took to prevent the imminent threat from Datavault's data breach. Protective measures after a data breach are harms traditionally recognized by this Court as concrete injuries in fact. *See Remijas*, 794 F.3d at 694; *Lewert*, 819 F.3d at 967. The loss in sales is also a monetary damage, which *TransUnion* stated is generally an injury in fact for Article III standing. *TransUnion*, 141 S. Ct. at 2204. Under this *TransUnion* standard, the financial harms Midway experienced to protect his business are injuries in fact.

**C. Midway's Physical and Medical Harms from Emotional Distress from the Data Breach Are Injuries in Fact.**

As a result of Datavault's data breach, Midway experienced increased stress and anxiety. R8. The increased stress and anxiety gave him insomnia and made focusing difficult. *Id.* The data breach also forced him to attend additional therapy sessions to control his heightened anxiety. *Id.* These physical and medical harms from the emotional distress caused by the data breach are injuries in fact.

By itself, Midway's emotional distress is not an injury in fact. The *Pierre* court held that confusion and worry are not concrete injuries. *Pierre*, 29 F.4th at 939 (citing *Markakos v. Medicredit, Inc.*, 997 F.3d 778, 781 (7th Cir. 2021)). Similarly, this Court in *Wadsworth* held that plaintiff's "personal humiliation, embarrassment, mental anguish and emotional distress"

were insufficiently concrete injuries. *Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 668 (7th Cir. 2021).

Nonetheless, emotional distress can be a concrete injury in fact when there are physical manifestations of or medical diagnoses from the distress. The Supreme Court in *TransUnion* stated that at least some forms of emotional harm can be a concrete injury in fact. *See TransUnion*, 141 S. Ct. at 2211 ("Nor did those plaintiffs present evidence that the class members were independently harmed by their exposure to the risk itself—that is, that they suffered some other injury (such as an emotional injury) from the mere risk . . ."). This Court in *Pennell* stated stress without physical manifestations or a medical diagnosis is insufficient for a concrete injury, implying that physical manifestations of distress or a medical diagnosis would create an injury in fact. *Pennell v. Global Trust Management, LLC*, 990 F.3d 1041, 1045 (7th Cir. 2021) (citing *United States v. All Funds on Deposit with R.J. O'Brien & Assocs.*, 783 F.3d 607, 616 (7th Cir. 2015)).

Midway has experienced physical manifestations of his emotional distress and required additional medical care due to the data breach. As a result of the stress and anxiety from the data breach, Midway experienced insomnia and an inability to focus. R8. The stress from Datavault's data breach also exasperated Midway's anxiety. *Id.* While the data breach did not give Midway a new anxiety disorder, Datavault's negligent management of Midway's information inflamed a condition that was already present. These physical manifestations of emotional distress and the exasperation of a medical condition are injuries in fact under *Pennell* and *TransUnion*.

**IV. Datavault's Data Breach Caused Midway's Increased Risk of Identity Theft, Incurred Cost of Protective Measures, and Emotional Damage.**

The district court did not reach the question of causation. Nonetheless, the causation requirement for Article III standing is met under the facts provided.

This Court has held that the company that data is stolen from caused the injury to those whose private or financial information was stolen. *See Remijas*, 794 F.3d at 688; *Lewert*, 819 F.3d at 963. Applying this precedent, Datavault was the cause of Midway's injuries for purposes of Article III standing.

This Court has rejected arguments that previous data breaches can negate causation. *See Remijas*, 794 F.3d at 696 ("The fact that . . . some other store *might* have caused the plaintiff's private information to be exposed does nothing to negative the plaintiff's standing to sue."). The previous credit card fraud Midway experienced thus does not prevent Midway from showing that Datavault was the cause of his injury in this case.

Should this court have any remaining questions of causation, the case should be remanded to the trial court for additional fact finding.

**V. Midway's Injuries Are Judicially Redressable Through Monetary Damages.**

The district court did not reach the question of judicial redressability, but Midway's injuries are clearly redressable through judicial action. Midway's injuries—the time and money spent on protective measures, the financial damage to his business, the cost of extra therapy, etc.—can all be redressed through monetary compensation.

Should this court have any remaining questions regarding judicial redressability, this case should be remanded to the trial court for additional fact finding.

**CONCLUSION**

Danny Midway has Article III standing. The district's court's dismissal should be reversed and the case remanded for a trial on the merits.

## Applicant Details

| | |
|---|---|
| First Name | **Amanda** |
| Last Name | **Cabal** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **apc2167@columbia.edu** |
| Address | **Address**<br>**Street**<br>**167 Waverly Avenue #7**<br>**City**<br>**Brooklyn**<br>**State/Territory**<br>**New York**<br>**Zip**<br>**11205**<br>**Country**<br>**United States** |
| Contact Phone Number | **3155157018** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **University of Rochester** |
| Date of BA/BS | **May 2019** |
| JD/LLB From | **Columbia University School of Law**<br>**http://www.law.columbia.edu** |
| Date of JD/LLB | **May 1, 2022** |
| Class Rank | **School does not rank** |
| Law Review/Journal | **Yes** |
| Journal(s) | **Human Rights Law Review** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/Externships | **No** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

Specialized Work Experience **Appellate**

## Recommenders

Hoag-Fordjour, Alexis
alexis.hoag@brooklaw.edu
2036454918
Sturm, Susan
ssturm@law.columbia.edu
212-854-0062

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Amanda Cabal
167 Waverly Avenue, #7
Brooklyn, NY 11205
(315) 515-7018
apc2167@columbia.edu

May 25, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

I am a Staff Attorney at the Second Circuit Court of Appeals and a 2022 graduate of Columbia Law School. I write to apply for a clerkship in your chambers beginning in September 2024 or any term thereafter.

I came to law school to prepare for a career in public service. At Columbia, I specifically sought opportunities to work on post-conviction matters, gaining significant experience with both the legal and practical issues facing currently and formerly incarcerated individuals. I greatly admire your career path and your previous work as a public defender, leading me to apply for this position. I believe that clerking in your chambers would enable me to contribute to the important work of the court while further readying me for a career using the law as a means to promote social justice.

At the Staff Attorney's Office, I have been exposed to the complexities of federal court practice and write clear and concise bench memoranda on a broad array of issues. This role has prepared me well for a clerkship and I am confident that with my writing and research skills, in addition to my dedication to public service, I would contribute meaningfully to your chambers.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from Professors Susan P. Sturm (212 854-0062, ssturm@law.columbia.edu) and Alexis J. Hoag-Fordjour (718 780-0372, alexis.hoag@brooklaw.edu) both of whom have supervised my work in and out of the classroom.

Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully,

*Amanda Cabal*

Amanda Cabal

# Amanda Cabal

apc2167@columbia.edu • (315) 515-7018 • www.linkedin.com/in/amanda-cabal

## Education

**Columbia Law School** New York, NY
J.D., May 2022
Honors: Harlan Fiske Stone Scholar (for academic achievement)
Lowenstein Fellow (for dedication to public interest law)

Activities: A Jailhouse Lawyer's Manual, Executive Articles Editor
Human Rights Law Review, Staff Editor
Prison Healthcare Initiative, President

**University of Rochester** Rochester, NY
B.A., *cum laude*, May 2018
Majors: International Relations and History
Take 5 Scholar: (fellowship to study *The Evolution of Modern Poetry*)
Study Abroad: Freiburg, Germany, Fall 2016

## Experience

U.S. Court of Appeals for the Second Circuit New York, NY
*Staff Attorney* August 2022 – Present
Prepare bench memoranda and orders providing legal analysis and recommended dispositions, in both counseled and *pro se* cases, for the judges of the Second Circuit. Subject matter includes: civil rights, criminal law and procedure, constitutional law, *habeas corpus*, securities, appellate jurisdiction, and civil procedure.

Criminal Defense Clinic New York, NY
*Student Attorney* Spring 2022
Represented individuals facing misdemeanor charges in New York City courts from arraignment through the final disposition. Developed litigation strategies, appeared in court, and provided a holistic defense to clients, including counseling on collateral consequences.

Squire Patton Boggs Public Service Initiative New York, NY
*Legal Extern* Fall 2021
Assisted indigent clients challenging death sentences and seeking *habeas* relief focusing on constitutional rights.

The Legal Aid Society – Prisoner's Rights Project New York, NY
*Legal Intern* Summer 2021
Supported attorneys pursuing class actions related to issues of solitary confinement, heat distress, and inadequate mental health treatment on behalf of people in NYC jails. Conducted research and wrote memos on access to personnel records and discrimination under the ADA for potential litigation in both state and federal court.

Paralegal Pathways Initiative New York, NY
*Fellowships Coordinator, Summer Research Assistant* 2020-2022
Led team of law students working on project for justice-impacted people in New York seeking employment in the legal field. Partnered with legal organizations to create fellowship positions, oversaw placements, and identified funding sources.

Phillips Black New York, NY
*Legal Extern* 2020-2021

Drafted language for a capital § 2254 *habeas corpus* brief. Focused on removing procedural bars and obtaining relief under *Atkins* in state and federal post-conviction.

Prisoner's Legal Services of New York — Ithaca, NY
*Legal Intern* — Summer 2020
Researched and wrote memoranda on a solitary confinement, excessive use of force, and access to mental health treatment. Reviewed disciplinary hearings, wrote advocacy letters, and drafted administrative appeals.

Columbia
Law School

**Registration Services**

law.columbia.edu/registration
435 West 116th Street, Box A-25
New York, NY 10027
T 212 854 2668
registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

03/15/2023 22:26:34

Program: Juris Doctor

## Amanda P Cabal

**Spring 2022**

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L6238-1 | Criminal Adjudication | Shechtman, Paul | 3.0 | A- |
| L9244-1 | Criminal Defense Clinic | Baylor, Amber; Low, Brent | 3.0 | A- |
| L9244-2 | Criminal Defense Clinic - Project Work | Baylor, Amber; Low, Brent | 4.0 | A- |
| L6473-1 | Labor Law | Andrias, Kate | 4.0 | B+ |
| L9160-1 | S Paralegal Pathways Initiative Leadership Seminar | Genty, Philip M.; Strauss, Ilene | 2.0 | CR |

**Total Registered Points: 16.0**

**Total Earned Points: 16.0**

**Fall 2021**

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L6791-1 | Ex. Constitutional Rights in Life and Death Penalty Cases | Irish, Corrine; Kendall, George; Nurse, Jenay | 2.0 | A- |
| L6791-2 | Ex. Constitutional Rights in Life and Death Penalty Cases - Fieldwork | Irish, Corrine; Kendall, George; Nurse, Jenay | 2.0 | CR |
| L6655-2 | Human Rights Law Review Editorial Board | | 1.0 | CR |
| L6359-1 | Professional Responsibility in Criminal Law | Cross-Goldenberg, Peggy | 3.0 | B |
| L9160-1 | S Paralegal Pathways Initiative Leadership Seminar | Genty, Philip M. | 2.0 | CR |
| L8293-1 | S. Access to Justice: Current Issues and Challenges [ Minor Writing Credit - Earned ] | Richter, Rosalyn Heather; Sells, Marcia | 2.0 | A- |
| L9563-1 | S. Mental Health Law | Levy, Robert | 2.0 | B+ |

**Total Registered Points: 14.0**

**Total Earned Points: 14.0**

**Spring 2021**

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L6241-1 | Evidence | Simonson, Jocelyn | 3.0 | A |
| L6655-1 | Human Rights Law Review | | 0.0 | CR |
| L6169-2 | Legislation and Regulation | Johnson, Olatunde C.A. | 4.0 | B+ |
| L8520-1 | P. Capital Post Conviction Defense Practicum | Hoag, Alexis | 2.0 | A- |
| L8520-2 | P. Capital Post Conviction Defense Practicum: Experiential Lab | Hoag, Alexis | 2.0 | CR |
| L8517-1 | Workshop on Facilitating Meaningful Reentry | Genty, Philip M. | 2.0 | CR |

**Total Registered Points: 13.0**

**Total Earned Points: 13.0**

**Fall 2020**

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L8419-1 | Abolition: A Social Justice Practicum | Harcourt, Bernard E.; Hoag, Alexis | 2.0 | A |
| L8419-2 | Abolition: A Social Justice Practicum: Experiential Lab | Harcourt, Bernard E.; Hoag, Alexis | 1.0 | A- |
| L6425-1 | Federal Courts | Metzger, Gillian | 4.0 | A- |
| L6655-1 | Human Rights Law Review | | 0.0 | CR |
| L6474-1 | Law of the Political Process | Briffault, Richard | 3.0 | B+ |
| L6675-1 | Major Writing Credit | Genty, Philip M. | 0.0 | CR |
| L6695-1 | Supervised JD Experiential Study | Genty, Philip M. | 1.0 | CR |
| L6683-1 | Supervised Research Paper | Genty, Philip M. | 1.0 | CR |

**Total Registered Points: 12.0**

**Total Earned Points: 12.0**

**Spring 2020**

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L6133-2 | Constitutional Law | Barenberg, Mark | 4.0 | CR |
| L6108-4 | Criminal Law | Harcourt, Bernard E. | 3.0 | CR |
| L6679-1 | Foundation Year Moot Court | Strauss, Ilene | 0.0 | CR |
| L6177-1 | Law and Contemporary Society | Moglen, Eben | 3.0 | CR |
| L6121-25 | Legal Practice Workshop II | Polisi, Caroline Johnston | 1.0 | CR |
| L6118-2 | Torts | Zipursky, Benjamin | 4.0 | CR |

**Total Registered Points: 15.0**

**Total Earned Points: 15.0**

**January 2020**

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L6130-1 | Legal Methods II: Methods of Persuasion | Genty, Philip M. | 1.0 | CR |

**Total Registered Points: 1.0**

**Total Earned Points: 1.0**

**Fall 2019**

| Course ID | Course Name | Instructor(s) | Points | Final Grade |
|---|---|---|---|---|
| L6101-3 | Civil Procedure | Genty, Philip M. | 4.0 | B+ |
| L6105-3 | Contracts | Jennejohn, Matthew C. | 4.0 | B |
| L6113-1 | Legal Methods | Ginsburg, Jane C. | 1.0 | CR |
| L6115-25 | Legal Practice Workshop I | Izumo, Alice; Polisi, Caroline Johnston | 2.0 | P |
| L6116-1 | Property | Glass, Maeve | 4.0 | A |

**Total Registered Points: 15.0**

**Total Earned Points: 15.0**

**Total Registered JD Program Points: 86.0**

**Total Earned JD Program Points: 86.0**

**Honors and Prizes**

| Academic Year | Honor / Prize | Award Class |
|---|---|---|
| 2021-22 | Harlan Fiske Stone | 3L |
| 2020-21 | Harlan Fiske Stone | 2L |
| 2019-20 | Harlan Fiske Stone | 1L |

**Pro Bono Work**

| Type | Hours |
|---|---|
| Mandatory | 40.0 |
| Voluntary | 20.0 |

May 25, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Amanda Cabal, a member of Columbia Law's class of 2022, asked me to write this letter of recommendation in support of her application for a judicial clerkship. I happily accepted. Amanda is currently a staff attorney for the U.S. Court of Appeals for the Second Circuit. While at Columbia, I served as her instructor for two courses and witnessed her commitment to public service and her unflappable work ethic. These skills, combined with her nuanced understanding of the law, would make Amanda an excellent law clerk. I strongly recommend that you invite her to join you in chambers. In my fifteen years of supervising and educating young lawyers and law students, Amanda is one of the most diligent, thoughtful, and hard-working students I have encountered. As a former law clerk and former assistant federal defender, I am confident that Amanda would be able to successfully perform the duties of a clerk.

I first met Amanda in the fall of 2020 when she enrolled in my course, *Abolition: A Social Justice Practicum*. I had the pleasure of working with Amanda for a second semester when she joined my class, *Capital Post-Conviction Defense Practicum* in the spring of 2021. Both classes combined in-class instruction with outward facing fieldwork on behalf of incarcerated clients and on social justice campaigns. Amanda's contributions during seminar and to the fieldwork revealed were exemplary. Amanda chose to devote both semesters to working on behalf of a death sentenced individual in Mississippi pursuing federal habeas corpus relief. Her areas of focus were navigating the petitioner's potential *Brady v. Maryland* claim and helping to show that the petitioner fit the diagnostic criteria for intellectual disability under *Atkins v. Virginia*. The assignments required Amanda to digest a complicated post-conviction record, understand the relevant legal standards, and navigate procedural default. Amanda's contributions to the client's case were impressive. Her eagerness to tackle difficult research areas and her ability to incorporate feedback made her a valued member of the advocacy team.

In class, Amanda regularly provided welcome insights into the social, political, and historical forces that shape the criminal legal system in this country. A native of upstate New York, Amanda had a deep understanding of the centrality of the carceral system in rural communities to provide jobs, private contracts, and sustain the local economy. Her perspective helped her classmates understand that to move toward carceral abolition, states must provide jobs and resources to rural communities that otherwise rely on prisons for economic survival. On other topics, Amanda was unafraid to share her analysis of difficult legal concepts and to explore related policy considerations.

Amanda's commitment to public service extended outside the classroom to various social justice initiatives in the local community. As president of the Prison Healthcare Initiative, Amanda helped lead law student efforts to assist incarcerated people curtail the spread of coronavirus. Amanda also served as a leader in Columbia's Paralegal Pathways Project, which helps formerly incarcerated people train for and land paralegal jobs in local legal organizations. In addition to training incarcerated people on best legal research practices, Amanda recruited local organizations to partner with the Project and helped to destigmatize incarceration in the workplace.

Equally as important, Amanda is funny, engaging, and curious. Outside of class, Amanda and I often spoke about her experiences in law school, her intentions after graduation, and the difficulty she experienced creating robust public service opportunities for herself and her classmates in a corporate-dominated learning environment. We spoke candidly about the unique pressures and demands of advocating for people from under-resourced communities. Amanda approached these discussions with experience, thoughtfulness, and care. I have enjoyed remaining in contact with Amanda since she graduated, and I left Columbia to join the faculty at Brooklyn Law. As a staff attorney for the U.S. Court of Appeals for the Second Circuit, Amanda has further honed her research and writing skills in a variety of contexts, which will be an invaluable asset to your chambers,

Amanda Cabal is exactly the kind of student who would bring the full richness of her perspective and experiences to the table. She has a sharp legal mind and a kind heart; she would make a fantastic law clerk. I give her my strongest recommendation. Please contact me, alexis.hoag@brooklaw.edu or (203) 645-4918, should you have any questions or need additional information.

Warm regards,

Alexis Hoag-Fordjour

May 25, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Amanda Cabal for position as your law clerk. I worked closely with Amanda during her second and third year at Columbia Law School through her role in the Paralegal Pathways Project (PPI) and the Jailhouse Lawyers Manual. As the Principal Investigator on grants relating to the fellowship, recruitment, and sustainability of PPI and a faculty supervisor for the Jailhouse Lawyers Manual, I had the opportunity to experience firsthand Amanda's extraordinary day-to-day work. Her commitment, effectiveness, insight, wisdom, analytical rigor, and follow through were exemplary. She was a consistent, grounding, and powerful presence in the work, combining comprehensive research, excellent writing, and commitment to building the leadership of people directly affected by mass incarceration. Her daily actions spoke volumes about the centrality of justice to Amanda's sense of self, her professional identity, and her daily practice. She used her time in law school to build her capacity as a legal advocate and a change agent equipped to collaborate with and advocate for system-impacted individuals and communities. She has carefully crafted a professional trajectory that will continue to position her to be an effective lawyer, leader, and collaborator. She is an outstanding and exemplary candidate for a clerkship. I recommend her with great enthusiasm and without reservation.

Amanda served as PPI's Fellowship Coordinator and Summer Research Assistant during her second summer, creating an innovative and lasting collaboration between PPI and the Jailhouse Lawyers' Manual. Her thorough and beautifully presented research on barriers to employment stemming from incarceration became a pillar of PPI's successful application for the Clifford Chance Racial Justice Award, and then a part of PPI's curriculum. Without fanfare or self-promotion, Amanda just consistently did the work that needed to be done, often going way beyond the call of duty to help create a truly path-breaking collaboration among law students and people directly affected by incarceration. Her work modeled the value of incorporating directly affected individuals into advocacy, research, and policy making, and also supported those individuals to increase their success and thrive in these roles. This focus is both innovative and necessary to advance transformative change in the criminal legal system.

Amanda also demonstrated strong leadership abilities as Fellowship Coordinator for PPI. She enlisted a group of students in developing the fellowship component of PPI, participated in fund-raising, built collective interest in supporting the work going forward, and laid the foundation for strong leadership to emerge so that the work would be sustained going forward. Her commitment to public interest is unwavering and profound, leading to her receipt of the Lowenstein Fellowship, a highly competitive award for students pursuing public interest. As I said in my recommendation, "Amanda is the real deal. I cannot imagine a more deserving recipient of the Enhanced LRAP scholarship."

Amanda's position as the Staff Attorney for the U.S. Court of Appeals of the Second Circuit has further strengthened her already outstanding research and writing skills and crystallized her interest in clerking. That position has drawn on her analytical and communication skills, affording her the experience of writing bench memoranda and orders, providing legal analysis and proposed dispositions in both counseled and pro se cases, most often reviewing pro se filings. I have been impressed with the insightfulness, care, and balance apparent in her reflections about her experience in the prisoner's rights and criminal appeals space.

Amanda is an unusually committed, thoughtful, and responsible lawyer, one of the most effective I have worked with at Columbia Law School. She also has a dry and wonderful sense of humor, and a calm presence that makes her a joy to work with. I have no doubt that Amanda will be an outstanding law clerk, and give her my unqualified recommendation. Please feel free to follow up if I can provide any additional information.

Sincerely,

Susan Sturm

Susan Sturm - ssturm@law.columbia.edu - 212-854-0062

**AMANDA CABAL**
Columbia Law School J.D. '22
(315) 515-7018
apc2167@columbia.edu

CLERKSHIP APPLICATION WRITING SAMPLE

This writing sample is a bench memo providing legal analysis and recommended disposition in a *pro se* appeal for a three-judge panel of the Second Circuit. Names of the parties have been changed along with any other identifying information. This writing sample has been lightly edited for grammar and is being used with permission from my supervisor at the Staff Attorney's Office.

## Issue Raised and Recommendation

**Issue:** John Doe, proceeding *pro se*, appeals from a judgment dismissing his claims brought under 42 U.S.C. § 1983 and related state laws for, among other things, malicious prosecution. Pursuant to a warrant, Doe was arrested for violating the conditions of an order of protection after mail addressed to him arrived at his ex-wife's home—the apparent result of providing his former address when filling out a rental-car application. After the prosecutor entered a *nolle prosequi*, Doe sued the Franklin Police Department, the complaining witness, other individuals named in the order of protection, and the responding Franklin Police Department employee, Officer Smith. On a motion from the defendants, the district court dismissed the complaint, finding that, as relevant here, Doe failed to establish there was not probable cause for his arrest and subsequent prosecution. Doe now appeals only the dismissal of his state and federal malicious prosecution claims as to the complaining witness and Officer Smith. Additionally, Doe appeals the district court's failure to grant him leave to amend his complaint.

**Recommendation:** Affirm the judgment of the district court. Probable cause is a complete defense to malicious prosecution claims and Doe did not overcome the presumption that a judicial arrest warrant is supported by probable cause. The district court did not abuse its discretion when it failed to grant Doe leave to amend as Doe has not identified how amendment would cure the deficiencies in his complaint.

## Background

In 2011, Jane Miller, a defendant in this case, obtained an order of protection against Doe. Record on Appeal ("ROA") doc. 1 (Compl.) ¶ 1. Doe was later accused of violating this order and eventually entered an *Alford* plea, which resulted in a 50-year extension of the order of protection, now set to expire in 2062. *Id.* ¶ 2. In 2017, the Order of Protection was modified to include Mark Miller and Mary Miller, relatives of Jane Miller, as protected persons. *Id.* ¶ 21. As relevant here,

the order of protection directed Doe to "not contact the protected person in any manner, including by written, electronic or telephone contact" and to "not contact the protected person's home, workplace, or others with whom the contact would be likely to cause annoyance or alarm to the protected person." *Id.* ¶ 34.

In 2016, Miller reported to the Franklin Police Department that she was receiving mail at her address, 10 Elm Street—where Doe had lived previously—that was addressed to Doe. *Id.* ¶ 20. The mail, "2 or 3" envelopes, were invoices from a rental car company including toll and parking violation receipts. *Id.*

Police Officer Smith called the rental car company. A representative told her that the address could have been obtained from old rental information, but agreed to send Officer Smith a copy of the rental agreement to determine if Doe provided Miller's address, thereby violating the order. ROA doc. 2 at 24. According to Officer Smith, the rental agreement, signed by Doe in November 2016, indicates that 10 Elm Street as the address and includes his signature. *Id.* at 25, 26. Based on this information, in February 2017, Officer Smith submitted an arrest warrant application which was signed by a Connecticut state court judge, who found probable cause that Doe had violated the order of protection. Doe was arrested at the Canadian border in New York on July 4, 2017 and was held pending transport to Franklin. *Id.* at 23. Doe was released on bond on July 20, 2017 and defended the charges until the prosecutor entered a *nolle prosequi* in October 2018, approximately 18 months after Doe's arrest.

## I. Proceedings in the District Court

In October 2021, Doe filed his complaint in the Northern District of New York. Doe named the Franklin Police Department, and Police Officer Smith (the "City" defendants), as well as the individuals named in the order of protection: Jane Miller, Mark Miller, Mary Miller (the "Miller" defendants). On a motion from the City defendants, the case was transferred to the Connecticut

District Court. Doe alleged malicious prosecution, false arrest, negligence, gross negligence, and intentional infliction of emotional distress under 42 U.S.C. § 1983. Doe also alleged state law claims for negligence, gross negligence, malicious prosecution, false arrest, false imprisonment, negligent infliction of physical pain and emotional distress, intentional infliction of physical pain and emotional distress, and defamation. Finally, Doe sought either declaratory or injunctive relief that would nullify the *Alford* plea or find the Order of Protection null and void. Both the Franklin and the Miller Defendants moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6).

The district court granted their motion, reasoning as follows.

**a. Franklin Police Department**

Because the Franklin police department is not a municipality, it is not capable of being sued under § 1983 or Connecticut state law. *See Monell v. Dep't of Social Services*, 436 U.S. 658, 690; *Luysterborghs v. Pension and Retirement Bd. of City of Milford*, 50 Conn. Supp. 351, 354 (2007) ("The General Statutes do not contain a provision that generally establishes all municipal departments, boards, authorities and commissions as legal entities that operate separately from the municipality itself."). ROA doc. 60 (Order) at 5. Accordingly, all claims against the Franklin Police Department were dismissed with prejudice. *Id*. at 6.

**b. Officer Smith**

**i. Malicious Prosecution, False Arrest, and False Imprisonment Claims**

Officer Smith had probable cause to arrest Doe, and therefore Doe could not plead a plausible claim for malicious prosecution, false arrest, or false imprisonment. Probable cause is presumed as a matter of law when an arrest is made pursuant to a warrant issued by a neutral magistrate and Doe did not plausibly allege that Officer Smith prosecuted or arrested him without probable cause because he did not identify any false statements in Smith's affidavit. ROA doc. 60 (Order) at 11–13.

**ii. Remaining § 1983 Claims**

Doe brought other claims pursuant to § 1983: "Negligence and Gross Negligence," "Physical Pain and Suffering" and "Intentional Infliction of Ongoing Emotional Distress" under the Fourth Amendment. The district court found that "[n]one of these claims are cognizable under the cited authority." *Id.* at 14. All § 1983 claims against Officer Smith were dismissed with prejudice.

**iii. State Law Claims**

Doe's state law causes of action failed to state a claim, were time barred, and, as to the negligence and negligent infliction of emotional distress causes of action, were precluded by governmental immunity. *Id.* at 14. All state law claims against Officer Smith were dismissed with prejudice. *Id*. at 14–15.

**c. Miller Defendants**

**i. § 1983 Claims**

Jane Miller is Doe's former spouse and the other named defendants are her relatives. Doe did not allege that any of the Miller defendants were government officials or that any of their conduct was "fairly attributable" to the state. *Id.* at 7. Therefore, the Miller defendants could not be held liable under § 1983 and the federal claims against them were dismissed with prejudice. *Id.*

**ii. State Law Claims**

Doe raised various state law claims outlined above. The district court found that they all failed as a matter of law for factual insufficiency. *Id.* However, it also determined that they each failed on the merits, reasoning as follows:

"Negligent infliction of physical pain" and "intentional infliction of physical pain" are not recognized causes of action under Connecticut law. *Id.* at 9. The negligence claim could not be sustained because a person protected by a protective order has no legal duty to the person against

whom the protective order is issued to refrain from opening or reporting mail sent to her residence, s*ee Pelletier v. Sordoni/Shanska Const. Co.*, 286 Conn. 563, 578 (2008). ROA doc. 60 (Order) at 8. The false arrest claim failed because Doe was arrested pursuant to a warrant supported by probable cause, *see Lo Sacco v. Young*, 20 Conn. App. 6, 20 (1989). ROA doc. 60 (Order) at 8. The negligent infliction of emotional distress claim failed because a person protected by a restraining order who receives mail and then reports that mail is not engaged in behavior that would have an unreasonable risk of causing emotional distress, *see Carrol v. Allstate Ins. Co.*, 262 Conn. 433, 446–47 (2003). ROA doc. 60 (Order) at 8. Finally, the conduct Doe alleged was not sufficiently outrageous as a matter of law to support an intentional infliction of emotional distress claim, *see Appleton v. Bd. of Educ. of Town of Stonington*, 254 Conn. 205, 210–11 (2000) (discussing what constitutes outrageous conduct as a matter of law). ROA doc. 60 (Order) at 9.

The district court also denied Doe leave to amend his state law claims because his causes of action were time barred and therefore futile. *Id.* Doe was arrested on July 4, 2017, but did not file his complaint until October 20, 2020. The court determined that the arrest was both the occurrence at issue and the time at which Doe discovered some form of actionable harm. In Connecticut, negligence, gross negligence, and negligent infliction of emotional distress carry a two-year statute of limitations and three-year statute of repose. Conn. Gen. Stat. § 52-584. ROA doc. 60 (Order) at 9. Malicious prosecution, false arrest, false imprisonment, and intentional infliction of emotional distress and economic damages are subject to a three-year statute of limitations. Conn. Gen. Stat. § 52-577; ROA doc. 60 (Order) at 10. The court found that all of Doe's state law claims were therefore time barred and amendment would be futile.

## II. Proceedings in this Court

Doe explicitly appeals only the dismissal of his § 1983 and state law malicious prosecution claims against Jane Miller and Officer Smith. 2d Cir. doc. 34 (Brief) at 1. Doe argues there was

no probable cause to arrest and prosecute him, and that information in the affidavit supporting the arrest warrant is false. Additionally, Doe argues that his state law claim was timely brought and that the district court should have granted him leave to amend so that he might sufficiently plead facts. *Id.* at 6.

The defendants both urge this Court to affirm the district court's judgment. Officer Smith argues that because Doe's arrest was made pursuant to a valid judicial warrant, Doe cannot establish probable cause. 2d Cir. doc. 46 (Brief) at 6. Miller argues that she is a private citizen and therefore Doe's federal and state law claims cannot be sustained against her. 2d Cir. doc. 49 (Brief) at 10.

**Discussion**

This Court "review[s] the grant of a motion to dismiss *de novo*, accepting as true all factual claims in the complaint and drawing all reasonable inferences in the plaintiff's favor." *Fink v. Time Warner Cable*, 714 F.3d 739, 740–41 (2d Cir. 2013). A complaint "must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

**I. Malicious Prosecution**

Under Connecticut law, a malicious prosecution claim requires proof that "(1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice." *Spak v. Phillips*, 857 F.3d 458, 461 n.1 (2d Cir. 2017) (quoting *Brooks v. Sweeney*, 299 Conn. 196, 210–11 (2010)). Similarly, under § 1983, the elements of an action for malicious prosecution are "(1) the initiation of a proceeding, (2) its termination favorably

to plaintiff, (3) lack of probable cause, and (4) malice." *Savino v. City of New York*, 331 F.3d 63, 72 (2d Cir. 2003).

Under both Connecticut and federal law, probable cause is a complete defense to malicious prosecution. *See Mara v. Rilling*, 921 F.3d 48, 73 (2d Cir. 2019) (citing *McHale v. W.B.S. Corp.*, 187 Conn. 444, 447 (1982)). The relevant probable cause analysis "looks to the law of the state where the arrest and prosecution occurred." *Washington v. Napolitano*, 29 F.4th 93, 104 (2d Cir. 2022), *cert. denied*, No. 22-80, 2022 WL 17408172 (Dec. 5, 2022). The federal and Connecticut standards are substantively identical, requiring that "officers have knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime." *Id.* at 104–05.

"[I]t is well-established that a law enforcement official has probable cause to arrest if he received his information from some person, normally the putative victim or eyewitness." *Martinez v. Simonetti*, 202 F.3d 625, 634 (2d Cir. 2000) (internal quotation marks omitted). And an arrest authorized by a judicial warrant is generally "presumed" to be supported by probable cause. *Walczyk v. Rio*, 496 F.3d 139, 156 (2d Cir. 2007) (such warrants "may issue only upon a showing of probable cause"). To establish otherwise, a plaintiff must show (1) that supporting warrant affidavits "on their face, fail to demonstrate probable cause"; or (2) that defendants misled a judicial officer into finding probable cause by knowingly or recklessly including material misstatements in, or omitting material information from, the warrant affidavits. *Id.* at 156.

The district court correctly dismissed the malicious prosecution claims against the defendants because Doe's arrest was made pursuant to a warrant issued by a neutral magistrate and Doe has failed to show that this warrant was supported by false or misleading information.

Doe was arrested for violating a protective order that ordered him not to "contact the protected person in any manner, including by written, electronic or telephone contact and do not contact the protected person's home, workplace or others with whom the contact would be likely to cause annoyance or alarm to the protected person." ROA doc. 1 (Compl.) at 34. Doe argues that the letters sent to Miller's home were sent automatically and that he did not, by definition, "contact" Miller, as a third party, the rental car company, actually sent the letters. 2d Cir. doc. 34 at 7.

However, an officer's assessment of whether an offense has been committed need not "be perfect" because "the Fourth Amendment allows for some mistakes on the part of government officials," including "reasonable . . . mistakes of law." *Heien v. North Carolina*, 575 U.S. 54, 60–61 (2014). Therefore, even if Officer Smith mistakenly believed that the letters sent to Miller's home qualified as "contact," for the purpose of Conn. Gen. Stat. § 53a-40e, this mistake was likely reasonable, and therefore non-actionable. *See United States v. Coleman,* 18 F.4th 131, 140 n.4 (4th Cir. 2021*)* ("Under *Heien*, an officer's mistake of law may be reasonable if the law is ambiguous, such that reasonable minds could differ on the interpretation, or if it has never been previously construed by the relevant courts"); *United States v. Diaz*, 854 F.3d 197, 204 (2d Cir. 2017) (officer's "assessment was premised on a reasonable interpretation of an ambiguous state law, the scope of which had not yet been clarified" and other New York courts had reached conflicting conclusions).

While it is unclear whether Doe actually violated the protective order, the record shows that Officer Smith sought information to ensure to some extent that the contacts were initiated by Doe and not the byproduct of old information. In the application for the arrest warrant, Officer Smith states that she spoke to a car rental representative who said that Doe provided Miller's address. ROA doc. 1 at 20. Further, in the original incident report, Officer Smith writes that the

address "could have been obtained from old rental information" but that she would obtain a copy of the rental agreement to determine if Doe provided the address. ROA doc. 1 at 24. Given the arguably broad wording of the protective order, and the fact that Officer Smith explicitly sought information to confirm that Doe had affirmatively provided Miller's address, Doe's allegations do not overcome the presumption that probable cause supported the judicial warrant.

While the probable cause justification for Doe's prosecution is arguably thin, Doe still has not pled that Miller or Officer Smith acted with malice, a required element of a malicious prosecution claim under federal and Connecticut law. *See Spak v. Phillips*, 857 F.3d 458, 461 n.1 (2d Cir. 2017) (quoting *Brooks v. Sweeney*, 9 A.3d 347, 357 (Conn. 2010)); *Savino v. City of New York*, 331 F.3d 63, 72 (2d Cir. 2003). Doe's argument, that the defendants acted with malice, is based exclusively on allegations that they lacked probable cause to arrest him. 2d. Cir. doc. 34 (Brief) at 15. Malice may be inferred from a lack of probable cause, *Rentas v. Ruffin*, 816 F.3d 214, 221 (2d Cir. 2016), however, as discussed above, Doe has not overcome the presumption that probable cause existed for his prosecution based on the judicial warrant.

Additionally, Miller is a private citizen. To prevail under § 1983, a plaintiff must demonstrate that a defendant acting under the color of state law deprived them of their rights. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). Miller was not acting under color of state law. Further, Doe's complaint does not allege facts showing "(1) an agreement between a state actor and a private party; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." *Ciambriello v. County of Nassau*, 292 F.3d 307, 324-25 (2d Cir. 2002). Under Connecticut law, an action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have

terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice. *McHale v. W. B. S. Corp.*, 187 Conn. 444, 447 (1982). As discussed above, there is little indication that Officer Smith, much less Miller, the complaining witness, acted without probable cause, or with malice. The district court correctly dismissed Doe's federal and state malicious prosecution claims against both of these defendants.

**II. Leave to Amend**

This court reviews *de novo* a district court's denial of leave to amend based on futility. *Olson v. Major League Baseball*, 29 F.4th 59, 71–72 (2d Cir. 2022). Amendment is futile if the proposed amended complaint fails to cure prior deficiencies or to state a claim upon which relief can be granted. *Panther Partners, Inc. v. Ikanos Commc'ns, Inc.*, 681 F.3d 114, 119 (2d Cir. 2012).

On Doe's state law claims, the district court found that leave to amend would be futile because they were time barred. *See* Conn. Gen. Stat. § 52-577 ("No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."). ROA doc. 60 (Order) at 9. Doe was arrested on July 4, 2017, the *nolle prosequi* was entered in his favor in October 2018, and he brought this claim in October 2021.[1] The district court determined that Doe's state law cause of action for malicious prosecution arose, at the latest, on the date of his

[1] The time bar does not apply to Doe's § 1983 claims. A three-year statute of limitations period applies to Doe's § 1983 claims. *See Lounsbury v. Jeffries*, 25 F.3d 131, 132 (2d Cir. 1994) (stating that § 1983 actions arising in Connecticut are governed by the three-year period set forth in Connecticut General Statute § 52-577). However, § 1983 and state law claims differ as to the date on which the statute of limitations begins to run. For § 1983 claims, federal law, not state law, determines the accrual date of a claim. *See Wallace v. Kato*, 549 U.S. 384, 388, 2d 973 (2007). A malicious prosecution claim accrues when "criminal proceedings have terminated in the plaintiff's favor." *Heck v. Humphrey*, 512 U.S. 477, 489 (1994). Doe's criminal proceedings terminated in his favor in October 2018, when the prosecutor entered a *nolle prosequi*. The latest Doe could have brought his claim was October 2021. Doe filed in the district court in October 2021 and his § 1983 claims are therefore timely.

arrest. ROA doc. 60 (Order) at 10. In support of this accrual date, the court cited an unreported case, *Gojcaj v. City of Danbury*, U.S. Dist. LEXIS 696, at *6 (D. Conn. 2016), for the proposition that "Connecticut state law causes of action for malicious prosecution begin to run at the outset of the prosecution." ROA doc. 60 (Order) at 10.

Under § 52-577, the applicable statute of limitations period commences upon the "act or omission complained of." *See Evanston Ins. Co. v. William Kramer & Assocs., LLC*, 890 F.3d 40, 45 (2d Cir. 2018). Section 52-577 provides: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of." "Section 52-577 is a statute of repose that sets a fixed limit after which the tortfeasor will not be held liable. . . [S]ection 52-577 is an occurrence statute, meaning that the time period within which a plaintiff must commence an action begins to run at the moment the act or omission complained of occurs." *Pagan v. Gonzalez*, 113 Conn. App. 135, 139 (2009) (quoting *Labow v. Rubin*, 95 Conn. App. 545, 467–68 (2006)). "When conducting an analysis under § 52-577, the only facts material to the trial court's decision on a motion for summary judgment are the date of the wrongful conduct alleged in the complaint and the date the action was filed." *Id.*

Despite the district court's citation to *Gojcaj*, review of the case law reveals that there is mixed treatment of the accrual date under Connecticut common law: *Silano*, No. CV-18-6076642 S, LEXIS 825, at *9 (Super. Ct. Jan. 9, 2020) (rejecting a common law malicious prosecution claim under § 52-577 when it was filed three years from the favorable disposition of the underlying criminal action); *Washington v. Ivancic*, 113 Conn. App. 131, 134 (2009) (holding that, based on *Lopes v. Farmer*, 286 Conn. 384 (2008), the statute of limitations in a § 52-577 malicious prosecution claim commences to toll from the date the criminal matter is dismissed.); *Turner v. Boyle*, 116 F. Supp. 3d 58, 91 (D. Conn. 2015) (a state law claim for malicious prosecution

"accrues only after the underlying action terminates in the plaintiff's favor"). While various courts cite *Lopes v. Farmer*, 286 Conn. 384 (2008), *Lopes* dealt only with a § 1983 malicious prosecution claim. It is unclear when a Connecticut common law claim for malicious prosecution begins to run.

However, because the district court decided this case on the merits, and Doe has not identified any amendments that would cure his pleading deficiencies, amendment would be futile. In his brief before this Court, Doe merely restates the pro se amendment standard. ROA doc. 34 (Brief) at 6. Doe also alleges, in a separate section, for the first time, that there were false statements about his prior arrest record in Officer Smith's affidavit for the arrest warrant. *Id.* at 9–10. As discussed previously, Doe has not overcome the presumption that probable cause for his arrest existed. The application for the arrest warrant indicates that mail addressed to himself was sent to Miller's home, in violation of the order of protection. It is unclear, and Doe has not identified, how these new allegations about his criminal record would cure his complaint. While this Court has held that district courts should generally not dismiss a pro se complaint without granting the plaintiff leave to amend, leave to amend is not necessary when it would be futile. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (finding leave to replead would be futile where the complaint, even when read liberally, did not "suggest[] that the plaintiff has a claim that she has inadequately or inartfully pleaded and that she should therefore be given a chance to reframe"). Because Doe has not offered any new factual allegations or legal theories that would cure the existing complaint's deficiencies, the district court's denial of leave to amend was correct.

**Conclusion**

For the above reasons, it is recommended that this Court affirm the judgment of the district court.

## Applicant Details

| | |
|---|---|
| First Name | **Daniel** |
| Last Name | **Caballero** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **dcaballero4@law.fordham.edu** |
| Address | **Address**<br>**Street**<br>**68 West 69th Street, Apt 1A**<br>**City**<br>**New York**<br>**State/Territory**<br>**New York**<br>**Zip**<br>**10023**<br>**Country**<br>**United States** |
| Contact Phone Number | **4235038773** |
| Other Phone Number | **4235038773** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Wesleyan University** |
| Date of BA/BS | **May 2015** |
| JD/LLB From | **Fordham University School of Law**<br>**https://www.fordham.edu/info/29081/center_for_judicial_engagement_and_clerkships** |
| Date of JD/LLB | **May 19, 2024** |
| Class Rank | **10%** |
| Law Review/ Journal | **Yes** |
| Journal(s) | **Fordham Urban Law Journal** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Professional Organization

| | |
|---|---|
| Organizations | **Just the Beginning** |

## Recommenders

Gordon, Jennifer
jgordon@fordham.edu
(212)636-7444
Greene, Abner
agreene@fordham.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Daniel Caballero
68 West 69th Street, Apt 1A
New York, NY 10023

June 12, 2023

The Honorable Juan Sánchez
United States District Court
for the Eastern District of Pennsylvania,
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Chief Judge Sánchez:

I am a rising fourth-year law student in the evening division of Fordham University School of Law, where I am a member of the Urban Law Journal and a Deputy Executive Commentary Editor of the Voting Rights and Democracy Forum. I am respectfully applying for the one-year clerkship with your chambers for the 2024-2025 term or any term thereafter.

I am applying to be your clerk because the experience would support my public interest career in consumer protection litigation. As an associate at Booz Allen Hamilton, I help the federal government, namely the Centers for Medicare and Medicaid Services and the Social Security Administration, provide essential benefits to millions of the neediest Americans. Because of this experience, I learned about how the law protects consumers and became motivated to change careers. But public service has remained central to my professional identity. I gravitated to Fordham Law because of the Stein Scholars Program in Public Interest Law and Ethics, where I would get special administrative support to pursue a public interest career. Last summer, I interned at the U.S. Attorney's Office for the Eastern District of New York to get an inside look at how prosecutors work and gain practical legal writing and research experience. This summer, I am a summer associate at Selendy Gay Elsberg, a boutique litigation firm with a demonstrated commitment to public interest work. Next year, I will take the bar exam in February and afterward provide direct legal services to indigent clients through New York's Pro Bono Scholars program. A clerkship would allow me to continue my public interest work and make me a better litigator by giving me a deeper understanding of judicial decision-making.

Attached, please find my resume, unofficial law school transcript, and writing sample. In addition, letters of recommendation are attached from Professors Jennifer Gordon (jgordon@fordham.edu, 212-636-7444) and Abner Greene (agreene@fordham.edu, 212-636-6962). Should I be granted an interview, I can travel upon minimal notice. Thank you for your kind consideration of my application.

Respectfully yours,

Daniel Caballero

# Daniel Caballero

68 West 69th Street, Apt 1A • New York, NY 10023 • 423-503-8773 • dcaballero4@fordham.edu

## EDUCATION

**Fordham University School of Law** New York, NY
Juris Doctor Candidate, Evening Division, May 2024
G.P.A.: 3.67
Honors: *Fordham Urban Law Journal*, Stein Scholars Program in Public Interest Law and Ethics, Pro Bono Scholar, Dean's List (2020-2023), Mary Daly Scholar (as of May 2023)
Activities: First Generation Students, Latin American Law Students Association, Fordham Evening Division Society, Voting Rights & Democracy Forum
Online Publication: *The Empire Strikes Back: Legislative and Executive Silencing of Voter Discontent*, FORDHAM L. VOTING RTS. & DEMOCRACY F. COMMENT. (Mar. 16, 2023, 10:15 AM).

**Wesleyan University** Middletown, CT
Bachelor of Arts, Political Science, May 2015, Completed course of study in three years
Minor: Film Studies

## EXPERIENCE

**Selendy Gay Elsberg** New York, NY
*Summer Associate*, Summer 2023

**Booz Allen Hamilton** New York, NY
*Associate*, January 2022 – Present, On Leave of Absence During Summer 2022 and Summer 2023
*Senior Consultant*, July 2017 – December 2021
*Consultant*, June 2015 – June 2017
Drafted and updated hundreds of scripts for federal Affordable Care Act (ACA) call centers that helped millions of Americans enroll in, and understand, health insurance. Led policy team in researching and analyzing statutes, regulations, and court orders that affected federal health insurance policy. Served as deputy lead for script writing team, which involved (1) reviewing team members' writing for clarity and accuracy and (2) organizing project timelines with team managers and the client.

**U.S. Attorney's Office for the Eastern District of New York, Criminal Division** Brooklyn, NY
*Student Volunteer – Law Intern*, Summer 2022
Drafted a response to a habeas petition, an appellate brief, and a memo for a motion to forfeit a bond. Reviewed evidence and conducted legal research for prospective indictments.

**Fordham University School of Law** New York, NY
*Voting Rights & Democracy Forum, Deputy Executive Commentary Editor*, Academic Year 2023 – 2024
*Voting Rights & Democracy Forum, Founding Senior Articles Editor*, Academic Year 2022 – 2023
Work with student authors to prepare their articles for publication by making substantive and grammatical recommendations. Collaborate with the executive board to determine the Forum's goals and direction.
*Academic Success Program, Tutor*, Spring 2022
Tutored first-year student in developing case reading, note taking, and exam taking skills for first-year torts class.
*Legal Writing Program, Teaching Assistant to Adjunct Professor Chris Prevost*, Academic Year 2021 – 2022
Held office hours addressing specific questions about legal writing and research techniques, as well as oral argument preparation. Taught students Bluebook citation rules and answered questions throughout the academic year.

**WesCab** Middletown, CT
*Founder and Manager*, August 2013 – January 2015
Developed affordable intracollegiate transportation option (Uber before Uber). Transported over 200 students.

## INTERESTS

I enjoy backpacking (this past winter, I went to Argentine Patagonia; this summer, I will hike the Wonderland Trail around Mount Rainier) and unique restaurant experiences.

# Daniel Caballero

68 West 69th Street, Apt 1A • New York, NY 10023 • 423-503-8773 • dcaballero4@fordham.edu

**UNOFFICIAL TRANSCRIPT**

Fordham University School of Law

Cumulative G.P.A.: 3.67

**Fall 2020**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Contracts | Helen Bender | A | 5.0 | |
| Torts | Jed Shugerman | A- | 4.0 | |
| Legal Process and Quantitative Methods | Various | P | 1.0 | P/F mini-course during 1L orientation |
| Legal Writing and Research | Chris Prevost | IP | 0.0 | Grade awarded in spring semester |

Semester G.P.A.: 3.85

**Spring 2021**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Civil Procedure | Marc Arkin | A- | 4.0 | |
| Legislation and Regulation | Jennifer Gordon | B+ | 4.0 | |
| Legal Writing and Research | Chris Prevost | A- | 3.0 | |

Semester G.P.A.: 3.55

**Fall 2021**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Property | Nestor Davidson | A- | 4.0 | |
| Constitutional Law | Abner Greene | A- | 4.0 | |
| Sentencing Law and Policy | John Pfaff | A- | 3.0 | |

Semester G.P.A.: 3.67

**Spring 2022**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Evidence | Daniel Capra | A- | 4.0 | |

# Daniel Caballero

68 West 69th Street, Apt 1A • New York, NY 10023 • 423-503-8773 • dcaballero4@fordham.edu

| | | | | |
|---|---|---|---|---|
| State and Local Government | Nestor Davidson | A | 3.0 | |
| Criminal Law | Deborah Denno | A- | 3.0 | |

Semester G.P.A.: 3.85

**Summer 2022**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Externship: Stein Scholars Fieldwork | N/A | P | 3.0 | Externship Fieldwork: U.S. Attorney's Office E.D.N.Y., Criminal Division |
| Externship: Stein Scholar Seminar | Judith Killen | B+ | 1.0 | |

Semester G.P.A.: 3.33

**Fall 2022**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Criminal Procedure: Investigative | Ethan Greenberg | A- | 3.0 | |
| Civil Litigation Drafting | Christopher Connolly | B+ | 3.0 | |
| Workers, the Law, and the Changing Economy | Jennifer Gordon | A- | 2.0 | |
| Independent Study | Abner Greene | P | 2.0 | In satisfaction of writing requirement<br>Paper topic: First Amendment protections of telephonic harassment of public officials |

Semester Year G.P.A.: 3.54

# Daniel Caballero

68 West 69th Street, Apt 1A • New York, NY 10023 • 423-503-8773 • dcaballero4@fordham.edu

**Spring 2023**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Federal Courts | Abner Greene | A- | 3.0 | |
| Professional Responsibility | Russell Pearce | A- | 3.0 | |
| Fundamental Lawyering Skills | John Owens | A- | 3.0 | |

Semester G.P.A.: 3.67

**Fall 2023**

| Course Name | Instructor | Grade | Credit Units | Comments |
|---|---|---|---|---|
| Corporations | Caroline Gentile | | 4.0 | |
| Decarceration Seminar | Natasha Vedananda & Michelle Lewin | | 2.0 | |

Semester G.P.A.: T.B.D.

# FORDHAM UNIVERSITY SCHOOL OF LAW
# EXPLANATION OF TRANSCRIPT

## Grade Scale for the Juris Doctor (J.D.)

| Effective Fall 2014 | | Prior to Fall 2014 | |
|---|---|---|---|
| **Grade** | **Quality Points** | **Grade** | **Quality Points** |
| A+ | 4.333 | A+ | 4.30 |
| A | 4.000 | A | 4.00 |
| A- | 3.667 | A- | 3.70 |
| B+ | 3.333 | B+ | 3.30 |
| B | 3.000 | B | 3.00 |
| B- | 2.667 | B- | 2.70 |
| C+ | 2.333 | C+ | 2.30 |
| C | 2.000 | C | 2.00 |
| C- | 1.667 | C- | 1.70 |
| D | 1.000 | D | 1.00 |
| F | 0.000 | F | 0.00 |
| P | Not in GPA | P | Not in GPA |
| S | Not in GPA | S | Not in GPA |

**Class Ranking** - The Law School does not calculate class rankings.

**Transfer Credit** - Transfer credit (ex. TA, TB, etc.) represents work applicable to the current curriculum and must be a minimum of a "C" grade to be accepted. Transfer credit is not included in the weighted grade point average.

**Repeating Courses** - Only a course with a failed grade may be repeated. Failed required courses must be repeated. Failed elective courses may be repeated, however this is not required. If repeated, the quality points of the new grade will be half in value (ex. F/A would be 2.00 quality points). The original failing grade remains on the transcript.

## Grade Scale for Master of Laws (LL.M.) and Master of Studies in Law (M.S.L.)

| Effective Fall 2017 | |
|---|---|
| **Grade** | **Quality Points** |
| H+ | 4.2 |
| H | 4.0 |
| H- | 3.8 |
| VG+ | 3.6 |
| VG | 3.4 |
| VG- | 3.2 |
| G+ | 3.0 |
| G | 2.8 |
| G- | 2.6 |
| P+ | 2.4 |
| P | 2.2 |
| P- | 2.0 |
| F | 0.0 |

| Prior to Fall 2017 | |
|---|---|
| **Grade** | **Description** |
| H (Honors) | Outstanding performance |
| VG (Very Good) | Excellent performance |
| G (Good) | Above average performance |
| P (Pass) | Performance worthy of credit |
| F (Fail) | Inferior performance that does not satisfy the minimum standard for course credit |

*Effective Fall 2014 within each grade level (H, VG, G, P), students may be awarded a plus (+) or minus (-) to distinguish performance on the high end or the low end within the grade level.*

## Grade Scale for Legal Writing and Introduction to U.S. Legal System Courses

(These grades are not factored into honors determinations)

**Students Admitted Prior to Fall 2017**

| Grade | Description |
|---|---|
| HP (High Pass) | Outstanding |
| PA (Pass) | Good or Acceptable |
| LP (Low Pass) | Passing, but deficient performance |
| FA (Fail) | Performance unworthy of credit |

**Students Admitted Prior to Fall 2011**

| Grade | Description |
|---|---|
| H (Honors) | Outstanding |
| CR (Credit) | Good or Acceptable |
| F (Fail) | Performance unworthy of credit |

## Grade Scale for Doctor of Juridical Science (S.J.D.)

| Grade | Description |
|---|---|
| CR | Credit |
| NR | No Credit |

## Administrative Grades that May be Used in J.D., LL.M., and M.S.L Programs

AUD (Auditing)
CR (Credit)
INC (Incomplete)
IP (In Progress: year long course, final grade assigned in succeeding term)
NC (No Credit)
NGR (No Grade Received)
S (Satisfactory)
U (Unsatisfactory)
W (Withdrew)

*Student education records on reserve are maintained in accordance with Public Law 93-380, sec 438, "The Family Education Rights & Privacy Act" (FERPA).The policy of Fordham University pertinent to this legislation is available from the Registrar upon request.*

**Fordham University School of Law**
**150 West 62nd Street**
**New York, NY 10023**

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to give an extremely strong recommendation to Daniel Caballero for a clerkship in your chambers. Daniel is a sharp and creative thinker, a skilled researcher and excellent writer, and an all-around pleasure of a human being. I am confident he will be the best of clerks.

I met Daniel in his first year of law school, in Spring 2021. At the time, he was in my section of the required 1L course Legislation and Regulation, which combines a focus on the legislative process and statutory interpretation with an introduction to Administrative Law. He was then—and remains now—a student in Fordham's Evening Division, working full time as a healthcare consultant at Booz Allen Hamilton while attending law school at night. Despite a class size of over 60 students and the barriers imposed by the zoom format, I was immediately impressed by Daniel, and only grew more so over the course of the semester. From the high quality of his preparation and participation, I would have guessed that he had all the time in the world on his hands to focus on his classwork, not that he was balancing it with a serious day job. Daniel frequently brought healthcare-related litigations and regulations to my attention, noting how they exemplified or challenged points we had discussed in class. In addition to his deep engagement with the topic and materials of the course, he showed a mastery of the details of the Affordable Care Act and the complex regulations that govern its implementation that would have been impressive in an attorney several years out of school, never mind a student just beginning to study law.

I had the chance to work most closely with Daniel when he was one of nineteen students in my seminar, Workers, the Law, and the Changing Economy, in the Fall of 2022. This class has a heavy reading load and a demanding slate of three writing assignments. Although all three of his submissions were of high quality—Daniel is an excellent writer, incisive in his analysis and clear and concise in his prose—I was particularly struck by one of them. For a paper in which students were required to critically evaluate a strategy to advance workers' rights in the context of global supply chains, he considered whether there was any room to use consumer protection law against brands that advertise their "fair trade" or "conflict-free" products while in fact contracting for manufacturing with companies that rely on child labor and other practices that violate human rights norms. This was not among the ideas we had discussed in class; he came to it himself while thinking about the deception inherent in corporate claims of social responsibility absent meaningful monitoring. It is characteristic of Daniel's approach to problem-solving that when the obvious category of "labor law" did not provide a solution, he drew creative connections across fields to come up with an alternative. His paper ably backed up this idea through in-depth research and analysis. After he submitted his concept note for the paper, I was at a conference where litigators described the early stages of a cutting-edge case (the first, I believe, in the field) where they were preparing to use this strategy to address issues in the cocoa supply chain. It is both remarkable and yet typical of Daniel that he independently arrived at this litigation strategy at the same time as those working in the arena for decades.

Beyond his academic work, Daniel has demonstrated his leadership and honed his research, writing, and advocacy skills in a range of other contexts. Most students who work full time and attend our Evening Division are hard pressed to do more than attend classes. Daniel, however, has somehow managed to keep up a slate of extra-curricular activities that would be impressive even if he had nothing but school on his plate. He was elected by his peers to the position of Senior Articles Editor on the Fordham Voting Rights and Democracy Forum, a new publication, while also working as a staff member of the Fordham Urban Law Journal. He was selected through a competitive process as a Stein Scholar in Public Interest Law and Ethics, and—in recognition of his excellence as a writer and legal thinker—hired by faculty to work with his peers as a Legal Writing Teaching Assistant and, separately, a 1L tutor. And all this while keeping up a GPA that has put him on the Dean's List every semester since he started law school, and rising through the ranks at Booz Allen Hamilton, from Consultant to Senior Consultant to Associate (a promotion given while he was in his second year of law school). Daniel has also sought out work opportunities during his time in law school to hone his advocacy skills, including taking a leave from Booz Allen last summer to work at the US Attorney's Office for the Eastern District of NY, Criminal Division. He will take another leave this upcoming summer to serve as a summer associate at Selendy Gay Elsberg in the firm's litigation department.

Daniel is studying law with a specific purpose: to advance the interests of consumers in the field of healthcare. He has often expressed to me that his years of work as a healthcare consultant exposed him to the outsized power of medical providers and insurance companies in the field, frequently exercised to the detriment of consumers. He is pursuing a law degree to gain the tools he needs to address that imbalance of power. It was clear to me from the day I first met him, and is even clearer now, that Daniel has the intellect and the determination to achieve this at a very high level, whether through individual representation or at the level of government policy.

In addition to his agile mind, sharp research skills, and top-notch writing, Daniel's warmth and gentle sense of humor make him a joy to be around. I am tremendously confident that he will be an asset to your chambers, and it is my pleasure to recommend him

Jennifer Gordon - jgordon@fordham.edu - (212)636-7444

to you.

Sincerely,

Jennifer Gordon
Professor of Law

Jennifer Gordon - jgordon@fordham.edu - (212)636-7444

**Fordham University School of Law**
**150 West 62nd Street**
**New York, NY 10023**

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing with high praise for Daniel Caballero, who is applying for a clerkship in your chambers. I know Daniel from teaching him in Constitutional Law during his second year fall evening, from teaching him in Federal Courts this term, and more specifically from advising him on his paper on criminal telephonic harassment of public officials and their staff members.

Daniel has a wonderfully engaging temperament; he is a great pleasure to talk with about pretty much anything. His highly intelligent mind has been honed in part through his work for Booz Allen Hamilton on implementing the Affordable Care Act. He was enormously helpful in our class discussions in the fall of 2021 about the various cases that the ACA spawned. He has been equally as helpful this term in Federal Courts, with questions and comments that are observant, challenging, and offered with his infectious good nature and humor. If you meet him for an interview, you'll quickly like him enormously for his terrific interpersonal skills.

These skills go along with an excellent mind, which has produced a strong GPA so far at Fordham Law School. I have also seen that mind on display in advising Daniel on his First Amendment/criminal law paper. He spotted an interesting issue in his work last spring – when do phone calls to public officials that fall short of actionable threats nonetheless constitute actionable criminal harassment, and when are they protected by various aspects of the First Amendment (including the right to petition for redress of grievances)? The line is sometimes tricky to draw, and Daniel, with great writing skills and research that sweeps in some fascinating U.S. legal history, has been pursuing a measured approach that has produced a terrific piece of work so far. He may continue to hone it for publication.

Daniel would make a great addition to a chambers that needs someone with a sharp legal mind, excellent organizational/interpersonal skills, and great humor and optimism. You'll like him enormously and see how smart and fun he'd be to work with. I hope you hire him!

Sincerely,

Abner S. Greene

Abner Greene - agreene@fordham.edu

# Daniel Caballero

68 West 69th Street, Apt 1A • New York, NY 10023 • 423-503-8773 • dcaballero4@fordham.edu


## WRITING SAMPLE

The attached unedited writing sample is response to a motion for summary judgment that I wrote for my Civil Litigation Drafting class with adjunct professor Christopher Connolly. It is being submitted with his permission. The entire motion is nineteen pages long and has the following sections: Preliminary Statement, Factual Background, Argument, and Conclusion. This excerpt omits the last part of the Argument section (which concerns the plaintiff's retaliation claim) and the Conclusion. The entire motion is available for your review upon request.

For this writing assignment, the professor provided exhibits from a fictional discovery process, which included emails, company performance evaluations, excerpts from depositions, and a memo of stipulated facts titled, "Background."

Plaintiff Kate Shelton respectfully submits this memorandum of law against Defendant Derby & Avon, L.L.C.'s (the "Firm's") motion for summary judgment.

**PRELIMINARY STATEMENT**

Plaintiff filed a complaint against Defendant alleging that the Firm discriminated against her in violation of Title VII of the Civil Rights Act of 1963, 42 U.S.C. § 2000e *et eq.*, as amended ("Title VII"). Plaintiff argues that the Firm discriminated against her on the basis of sex when they did not promote her and retaliated against her after she filed a complaint for discriminatory treatment with the Equal Employment Opportunity Commission ("E.E.O.C.").

The Firm now moves for summary judgment on both of Plaintiff's claims pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court should deny the motion in whole.

The record demonstrates genuine issues of material fact as to whether Plaintiff's sex was a consideration in the Firm's promotion decision. Although the Firm articulates legitimate, nondiscriminatory reasons for its decision to hire a barely experienced man over the far more experienced Plaintiff, the evidence shows that there are material factual disputes about those reasons. First, most of the Firm's reasons for its promotion decision do not relate to the original qualifications that it proffered when it solicited applications for the position. Second, the Firm's nondiscriminatory reasons for its promotion of Bristol over Plaintiff were either not unique to him, not necessary for the position, or not a significant consideration in the actual decision. Finally, there is a factual dispute regarding explicitly sexist justifications the Firm's managing partner made when he first announced the decision.

The record also demonstrates that there are genuine issues of material fact as to the Firm's retaliatory motives for its adverse employment actions against Plaintiff. Again, the Firm articulates legitimate, nondiscriminatory reasons for its decisions, but there is sufficient temporal and

circumstantial evidence for a jury to reasonably find that these asserted reasons are pretextual. First, the Firm's decision to staff Plaintiff with someone who sexually harassed her makes little sense given the company's unwritten staffing policies and the strongly deferential nature of the client's staffing request. Also, there is a sufficiently close temporal proximity between Plaintiff's filing of the E.E.O.C. complaint and the staffing decision to suggest that the former motivated the Firm to do the latter. Second, given the Firm's knowledge of the complaint and the sexual harassment Plaintiff endured, a jury could reasonably conclude that the decision to deny her an "exceeds expectations" evaluation and bonus was also retaliatory.

For the aforementioned reasons, the Court should deny the Firm's motion for summary judgment.

## FACTUAL BACKGROUND

The Firm employs Plaintiff as a senior paralegal, and she has worked for the Firm continually since 2008. Bkgd. at 1. Plaintiff has consistently received the "exceeds expectations" grade, the highest mark available, on her performance evaluations since 2011. *Id.* She has also received a bonus each of those years. *Id.* Her excellent work performance was recognized in 2018 when the Firm promoted her to "Senior Paralegal." *Id.* This promotion represented the Firm's acknowledgment that Plaintiff "has distinguished herself among her peers and is someone who can take on a lot of responsibility." Danbury Dep. at 84. Both of Plaintiff's supervisors were senior paralegals before the Firm promoted them to paralegal supervisor. Danbury Dep. at 84. After receiving her promotion, Plaintiff continued to distinguish herself as a "go-getter." Doc. 1.

### A. Weston's Promotion Decision

David Weston is the Firm's managing partner. On November 15, 2021, he announced via email that Bob Litchfield, one of the Firm's two paralegal supervisors, was retiring at the end of the year. Doc. 8. He also announced that the Firm would be looking to replace Litchfield by promoting an existing paralegal "with mature judgment, people skills, and initiative." *Id.* To determine if someone had these qualities, the Firm would consider each applicant's resume and annual evaluations. *Id.* Moreover, Weston said he would consult with Litchfield and Claire Danbury, the other paralegal supervisor, "given how well they know each of [the paralegals]." *Id.*

This approach was reasonable given Weston's position at the firm. Since his 2014 promotion to managing partner, he primarily focuses on management of the firm, including "crafting firm policies, establishing attorney compensation standards . . . and a host of other administrative tasks that preclude [him] from having an active litigation practice." Weston Dep. at 32. Given his limited litigation practice, Weston's interactions with paralegals have been minimal since he assumed his current role. Weston Dep. at 32. Accordingly, he relies primarily on paralegal

supervisors to oversee the performance of paralegals. *Id.* For example, Weston relies heavily on supervisor recommendations when making bonus determinations. Weston Dep. at 280. Although he is the "final-decisionmaker" for bonuses, Weston always follows the supervisors' recommendations. *Id.* The only requirement Weston has is that the supervisors only recommend people who are "also going to be receiving an 'exceeds expectations' [grade] on their annual performance evaluations." *Id.* But the "exceeds expectations" grade is given at the sole discretion of the paralegal supervisors, Bristol Dep. at 113, and only when their decision is unanimous. *See, e.g.*, Doc. 7 (showing paralegal supervisors as the sole evaluators for paralegal performance evaluations).

After receiving all the resumes for the paralegal supervisor position, Weston quickly reviewed them and each applicant's performance evaluations. Weston Dep. at 68. But Weston was confident that even this cursory review was unnecessary as he "pretty much knew their strengths and weaknesses" already. *Id.* He chose Tom Bristol for the paralegal supervisor position. *Id.*

Bristol is a 24-year-old man who had been working for the Firm as a paralegal for approximately eighteen months. Bkgd. at 2. He is also the nephew of the C.E.O. of Charter Oak Equity Investments, an investment fund that became one of the Firm's major clients in 2009. *Id.* Unlike Plaintiff, Bristol did not have any performance evaluations on file when he applied for the paralegal supervisor position. Bristol Dep. at 15. Regardless, he seemed to make an impression on Weston quickly. Doc. 1. After only three months of employment, Weston labeled him a "go-getter" after Bristol volunteered to attend a three-day training session on litigation software that Plaintiff also attended. Doc. 1. In early 2021, Weston was working on a toxic tort case – a rare opportunity given his administrative role at the firm – when Bristol was assigned as a paralegal. Weston Dep.

at 68. Bristol quickly impressed Weston with his technical and people skills, as well as his work ethic. *Id.*

**B. Weston's Meeting with Litchfield and Danbury**

On December 15, 2021, after Weston made his decision to promote Bristol, he called Litchfield and Danbury into his office as a "courtesy" so that they would know before he made the big announcement. Weston Dep. at 75. He also wanted to ensure they did not have any "huge objections" to his decision. *Id.* Accordingly, he only told them that he had made a tentative decision. *Id.* Before telling them that he had chosen Bristol, he wanted to know who Litchfield and Danbury would recommend. *Id.* Danbury believed that Plaintiff was the obvious choice given her "experience, people skills, and intelligence." Danbury Dep. at 83. Litchfield agreed. *Id.* Weston was not surprised at the selection since Litchfield and Danbury had worked with Plaintiff. Weston Dep. at 75. Additionally, Weston knew that Danbury and Plaintiff were good friends. *Id.*

When Weston told them that he had chosen Bristol, Litchfield was surprised. Litchfield Dep. at 78. Litchfield and Danbury recognized that Bristol was a "go-getter" and had made good first impressions, but they were concerned about his lack of experience. Litchfield Dep. at 78; Danbury Dep. at 83. Danbury expressed dissatisfaction with the choice as Plaintiff had far more experience than Bristol. Litchfield Dep. at 78; Danbury Dep. at 84. Additionally, Plaintiff had demonstrated her abilities over many years. Danbury Dep. at 84. Litchfield echoed these sentiments when he highlighted Plaintiff's senior paralegal promotion. *Id.*

Weston responded to Litchfield and Danbury's protests by saying that Bristol's promotion would "freshen things up." Danbury Dep. at 85; Weston Dep. at 75. In particular, Weston wanted a paralegal supervisor with Bristol's computer skills. Danbury Dep. at 85; Weston Dep. at 75; Litchfield Dep. at 78. This reason didn't make sense to Litchfield or Danbury, as those skills are not essential to the supervisor role. Litchfield Dep. at 102; Danbury Dep. at 85. A supervisor's

exposure to litigation software is limited to knowing which paralegals are familiar with it and ensuring there are enough paralegals trained on it. Danbury Dep. at 85. Danbury strongly believed maturity was far more critical to the supervisor role than computer skills. *Id.* Moreover, it was her opinion that there was "no reason to believe that [Plaintiff] can't learn whatever she needs to learn." *Id.* Upset that Weston was making a poor promotion decision, Danbury continued to make a case for Plaintiff's promotion. Danbury Dep. at 83. She said, "the decision was unfair and that seniority should count for something." *Id.* In response, Weston shot her a "cold look." *Id.*

He was growing increasingly impatient with the direction the discussion was going. Danbury Dep. at 83; Litchfield Dep. at 78; Weston Dep. at 75. Neither Litchfield nor Danbury had said anything that would change his mind. Weston Dep. at 75. He ended the meeting by reminding Danbury and Litchfield that Bristol was related to a major client. Danbury Dep. at 83; Weston Dep. at 75. According to Weston, Bristol's familial relationship made the promotion a good business decision. Weston Dep. at 75. But he also would have promoted Bristol even if he was not a client's nephew. Weston Dep. at 68.

Weston also told Litchfield and Danbury that having a man and a woman split the paralegal supervisor role made sense. Weston Dep. at 75. Weston claims that he prefaced this by saying Danbury herself had made that observation. *Id.* Danbury remembers the statement differently. *See* Danbury Dep. at 85. She remembers Weston saying that *he* thought it was a good idea. Danbury Dep. at 85. Danbury acknowledges that she said something similar in an internal memo she sent several months earlier about male paralegals sexually harassing female summer associates; but it was an offhand comment that she wrote in jest. Danbury Dep. at 86; *see* Doc. 2 (internal memo stating that male paralegals had been inappropriately flirting with female summer associates during

each of the past three summers). Litchfield's account more closely aligns with Weston's, although not completely. Litchfield Dep. at 78.

The next day, Weston announced Bristol's promotion to paralegal supervisor. Danbury Dep. at 83. This was not the first instance of the Firm making personnel decisions to Plaintiff's detriment.

**C. Simsbury's 2018 Sexual Harassment of Plaintiff**

When Plaintiff started working at the firm in 2008, she and Mike Simsbury, one of the Firm's partners, worked together without issue. Bkgd. at 5. Between 2015 and 2017, the two dated on an on-again, off-again basis. *Id.* In 2017, Plaintiff ended things with Simsbury after she started seeing Steve Shelton. *Id.* Plaintiff and Steve married in August 2017. *Id.* at 5-6. Shortly thereafter, Plaintiff found it was becoming harder to work with Simsbury. *Id.* at 6. He would get angry with her more easily over minor issues, dismissed her artistic pursuits as "silly photographer fantasies," and got uncomfortably close to her, often leaning over her when she was seated at her desk. *Id.* Plaintiff brought her concerns to Litchfield, but he dismissed her complaints and continued assigning her to work with Simsbury. Litchfield Dep. at 45; *id.*

On April 20, 2018, Simsbury's increasing abusiveness towards Plaintiff came to a head. After asking her to work late, Simsbury sent Plaintiff to the supply room to retrieve some items. Bkgd. at 6. The supply room was rarely occupied and usually deserted. Litchfield Dep. at 45. As she tried to leave, Simsbury entered the room and approached Plaintiff. *Id.* She could smell alcohol on his breath. *Id.* She tried to leave, but Simsbury blocked the doorway. *Id.* He knew she had recently separated from her husband and told her, "She could use a real man. It's now or never." *Id.* Simsbury grabbed her around the waist and tried to forcefully kiss her, saying, "You can make this hard or easy." *Id.* Plaintiff was able to push the drunkard out of the way, run out of the building, and head straight home. *Id.*

The next day at the office, Plaintiff came into Litchfield's office in tears. Litchfield Dep. at 45. She recounted her story to him and said she would quit before ever working with Simsbury again. *Id.* Thereafter, Litchfield never assigned the two together. *Id.* Sometime after the incident, Litchfield told Weston that he made it a point not to assign the two together because of their personal relationship. Weston Dep. at 256. Weston did not object, nor did he inquire further. *Id.* He relies heavily on paralegal supervisors to make such management decisions. *Id.* Additionally, the Firm does not maintain written policy guidelines for handling disputes between attorneys and paralegals. *Id.* at 240. Instead, it uses a flexible approach with supervisors as the initial problem solvers. *Id.* Only when supervisors fail to resolve the issue does it get escalated to Weston. *Id.*

**D. The E.E.O.C. Complaint and Mediation Offer**

On February 14, 2022, nearly two months after the promotion announcement, Plaintiff filed a complaint of discrimination against the Firm with the E.E.O.C. Doc. 5. She noted the firm's "history of treating women poorly" and her sexual assault in 2018. *Id.*; *see also* Doc. 2 (internal memo stating that male paralegals had been inappropriately flirting with female summer associates during each of the past three summers). The Firm was served the complaint within 48 hours. Weston Dep. at 138. On February 28, 2022, Weston sent a response on behalf of the Firm, disavowing any discriminatory intent in the promotion decision. Doc. 6.

The E.E.O.C. conducted a preliminary investigation, which involved taking statements from Plaintiff, Weston, Danbury, Bristol, and Litchfield. Bkgd. at 5. After the completion of the investigation, the E.E.O.C. offered to mediate the dispute. *Id.*

**E. The New Haven Group Matter and the Firm's Rejection of the Mediation Offer**

On July 10, 2022, the New Haven Group ("NHG") retained the Firm as counsel in a new matter. Torrington Dep. at 32. NHG's general counsel, John Torrington, had previously worked for the Firm and was familiar with its personnel. *Id.* When he first talked to Weston about retaining

the Firm, he immediately knew that he wanted Simsbury to lead the litigation team. *Id.* But beyond Simsbury, Torrington told Weston, and later Simsbury, that he trusted Simsbury with the rest of the staffing decisions: "Mike you're the captain of your ship." *Id.* Torrington mentioned Plaintiff as an option for a head paralegal role, but that opinion was based on similar work he had done with her ten years earlier. *Id.* In a follow-up email the next day to Simsbury and Weston, Torrington summarized the previous day's phone conversation. Doc. 4. Accordingly, he restated everything he had said already: excitement at the opportunity to work with the Firm's personnel again, mentioning Plaintiff as a possible paralegal staffing option, and repeating his deferential position. *Id.*

After the call with Torrington, Simsbury called Bristol to discuss paralegal staffing of the case. Simsbury Dep. at 72. When Simsbury told Bristol about Torrington's request for Plaintiff, Bristol noticed that Simsbury was bothered by it. Bristol Dep. at 92. Bristol had heard rumors that Simsbury and Plaintiff had "dated a long time ago and had had a pretty bad breakup and that it had something to do with Kate's marriage or separation." *Id.* Simsbury informed Bristol that Plaintiff would likely resist the assignment because she considered him an "abusive monster." Simsbury Dep. at 72. He wanted Bristol to "know that this wasn't as straightforward as he might think." *Id.* But Simsbury said that as far as he was concerned, "it was ancient history." *Id.* He had "put it in the past and so should she." *Id.* at 73.

Two days later, the Firm rejected the E.E.O.C. mediation offer. Bkgd. at 8.

**F. Bristol Assigns Plaintiff to Work with Simsbury**

The day after the Firm rejected the E.E.O.C.'s offer, Bristol told Plaintiff that she was to be assigned to the NHG matter with Simsbury. Bkgd. at 5. Plaintiff told Bristol that she hadn't "been assigned to work with Simsbury since 2018 after he had sexually assaulted [her]." Shelton Dep. at 324. Bristol told her that it sounded like "ancient history" and that she needed to "stop

being such a complainer and learn to be more of a team player." Shelton Dep. at 324. She told Bristol that she believed the staffing decision was in response to her E.E.O.C. complaint, and that she would not be intimidated. Shelton Dep. at 324. Bristol responded by threatening her with a negative performance evaluation and a withholding of her bonus: "[her] insubordination would have to be considered in [her] annual review and any disciplinary action the firm might take; at a minimum, I [Bristol] will make sure that you [Shelton] do not get any type of bonus this year." Bkgd. at 7. Plaintiff walked away. Shelton Dep. at 324.

The Firm does not maintain a formal policy regarding a client's request that particular staff be assigned to a specific matter. Weston Dep. at 225. The rule of thumb is that requests should be accommodated because "the customer is always right." *Id.* However, the Firm makes an exception when a requested employee is already committed to other work or when the Firm thinks that the "staffing proposed by the client will undermine the effectiveness of [the Firm's] advocacy." *Id.*

**G. The Consequences for Plaintiff's Refusal to Work with Simsbury**

After Plaintiff's refusal to work with Simsbury, she received a "meets expectations" grade on her August 12, 2022, performance review. Doc. 7. The review noted that Plaintiff's performance was exemplary with one exception – her refusal to work with Simsbury: "But for her unwillingness to take on a recent assignment, she would receive our highest evaluation of 'exceeds expectations.'" Doc. 7; *see also* Bristol Dep. at 109.

To receive an "exceeds expectations" grade and a bonus, both paralegal supervisors must agree on the award. Bristol Dep. at 113. Danbury thought that Plaintiff deserved the grade and the bonus, Bristol did not. *Id.* He believed that Plaintiff's refusal to work with Simsbury meant that "she was not willing to put [the Firm's] interests first." *Id.*

## ARGUMENT

### I. SUMMARY JUDGMENT STANDARD OF REVIEW

Summary judgment can only be granted when "the movant shows that there is no genuine dispute as to any material fact." Fed.R.Civ.P. 56(a). A material fact is one that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue about a material fact exists when there is sufficient evidence to allow a reasonable jury to return a verdict for the nonmoving party. *Id.* Moreover, when considering the motion, the court must construe all evidence and rational inferences "in the non-movant's favor." *Kirkland v. Cablevision Systems*, 760 F.3d 223, 224 (2d Cir. 2014).

At the summary judgment stage, the *McDonnell Douglas* tripartite framework governs evidentiary burdens for Title VII claims of discrimination and retaliation. *See Kirkland*, 336 F.3d at 225. First, a plaintiff must demonstrate a *prima facie* case of discrimination or retaliation. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Second, if the plaintiff satisfies their burden, then the defendant employer must articulate "some legitimate, nondiscriminatory reason" for the employment action. *Id.* Finally, if the defendant satisfies their burden, "the governing standard is whether the evidence, taken as a whole, is sufficient to support a reasonable inference that prohibited discrimination occurred." *James v. New York Racing Ass'n*, 233 F.3d 149, 156 (2d Cir. 2000). Put differently, "the test for summary judgment is whether the evidence can reasonably support a verdict in plaintiff's favor." *Id.* at 157.

### II. A REASONABLE JURY COULD FIND THE FIRM'S ASSERTED NONDISCRIMINATORY REASONS FOR PROMOTING BRISTOL OVER PLAINTIFF TO BE PRE-TEXTUAL

Plaintiff has sufficient evidence to support a *prima facie* claim of discrimination. Title VII proscribes employers from discriminating "against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . .

sex . . . ." 42 U.S.C. § 2000e-2(a)(1). To state a *prima facie* claim of discrimination under Title VII, "a plaintiff must plausibly allege that (1) the employer took adverse action against him and (2) his race, color, religion, sex, or national origin was a motivating factor in the employment decision." *Vega v. Hempstead Union Free School Dist.*, 801 F.3d 72, 86 (2d Cir. 2015). Plaintiff satisfies the first prong because failure to promote an employee constitutes an adverse action. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). Plaintiff satisfies the second prong of the *prima facie* standard because (1) as a woman, she is a member of a protected class, (2) she was qualified for the position she applied for, *see* Litchfield Dep. at 78; Danbury Dep. at 83, (3) she was denied the position, *see* Bkgd. at 3, and (4) there was an inference of sex-based discrimination because a man was promoted instead of Plaintiff, *see Jain v. Tokio Marine Management Inc.*, 16cv8104, 2018 WL 4636842, at *5 (S.D.N.Y. Sept. 27, 2018) (finding that courts have generally found an inference of discrimination where someone not a member of the same protected class as the plaintiff was hired). *See Brown v. Coach Stores, Inc.*, 163 F.3d 706, 709-10 (2d Cir. 1998) (establishing four-part framework for *prima facie* claims of discrimination based on a failure to promote).

**A. Although the Firm articulates nondiscriminatory reasons for not promoting Plaintiff, a jury could reasonably conclude that they are pretextual**

The evidence in this case is "sufficient to support a reasonable inference that prohibited discrimination occurred." *Jones*, 233 F.3d at 156. The Firm provides three nondiscriminatory reasons for promoting Bristol instead of Plaintiff: professional reputation and capabilities, Weston's impressions of Bristol's technical capabilities, and connection to a major client. Def. Mot. at 1-2; 11. There is sufficient evidence to suggest that these reasons are pretextual.

Most of the Firm's reasons do not relate to the listed qualifications for the Paralegal Supervisor Position. In Weston's announcement email, he wrote, "we are looking for an individual

with mature judgment, people skills, and initiative." Doc. 8. Weston also wrote that the promotion would be based on annual evaluations and the Paralegal Supervisors' recommendations. *Id.* Plaintiff had 10 years of "exceeds expectations" evaluations. Bkgd. at. 1. Bristol had never received a performance evaluation until after his promotion. Bristol Dep. at 15. Both paralegal supervisors believed that Plaintiff was a shoo-in for the position and strongly recommended her. *See* Danbury Dep. at 83; Litchfield Dep. at 78. Although Weston wrote that Paralegal Supervisor recommendations would be considered, Doc. 8, he completely and admittedly disregarded them, Weston Dep. at 75. Because Weston threw out the original criteria in making his executive decision to promote Bristol instead of Danbury, a jury could reasonably find his decision making suspect. *See, e.g.*, *Zann Kwan v. Andalex Group L.L.C.*, 737 F.3d 834, 846 (2d Cir. 2013) (finding that shifting explanations for an adverse employment action was a factor in creating a triable issue of fact). Weston may have believed that Bristol was qualified, Weston Dep. at 68, but Plaintiff met all of the listed qualifications and had far more experience than Bristol. Weston Dep. at 75. Although not dispositive in determining whether a reasonable basis exists for finding discriminatory intent, courts have found that superior qualifications have probative value. *See Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 103 (2d Cir. 2001); *Jain*, 2018 WL 4636842, at *6.

Putting aside Weston's convenient changes to the criteria for the Paralegal Supervisor position, the Firm's nondiscriminatory reasons for promoting Bristol were not unique to him, relevant for the position, or relevant to the decision.

Although Bristol had a positive reputation at the Firm, Bkgd. at 3, this was not a unique characteristic. Plaintiff also had a positive reputation. Doc. 1. Weston ascribed the same "go-getter" moniker to both Bristol and Plaintiff. *Id.* Plaintiff had a long record of exceeding

expectations on her performance reviews. Bkgd. at 1. She was promoted to Senior Paralegal in 2018, a sign that she was a reliable employee and could be in line for a supervisor promotion. Danbury Dep. at 84. Moreover, her direct supervisors thought highly of her. They described her as smart, Litchfield Dep. at 78, hardworking, Danbury Dep. at 84, and easy to work with, *id.*

Bristol's technology capabilities were not necessary for the Paralegal Supervisor position nor were they unique to Bristol. Although Bristol had a minor in computer technology, he did not have any experience with litigation software until a training session in the fall of 2020. Bristol Dep. at 29. Plaintiff attended the exact same training session. Doc. 1. Technology expertise is also irrelevant for the Paralegal Supervisor position. Litchfield Dep. at 102; Danbury Dep. at 85. Paralegal Supervisors' role is focused on overseeing the staffing and performance of paralegals. Bkgd. at 2. Insofar as technology knowhow could be useful in assigning paralegals, Danbury was confident that Plaintiff could easily get up to speed for the supervisor position. Danbury Dep. at 85. When Danbury and Litchfield pointed out that Weston had misjudged Plaintiff's technology capabilities, Weston grew frustrated and was forced to identify other justifications for his promotion decisions. Litchfield Dep. at 78; Danbury Dep. at 83. "Courts have recognized that an employer's disregard or misjudgment of a plaintiff's job qualifications may undermine the credibility of an employer's stated justification for an employment decision." *Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 103 (2d Cir. 2001).

The Firm's nepotistic justification for denying Plaintiff's promotion would not prevent a jury from reasonably finding illegitimate, discriminatory intent. Weston stated that this factor was not determinative of his decision. Weston Dep. at 68. Therefore, a jury could give it little probative value, especially given the context in which the reason was stated. During Weston's meeting with Litchfield and Danbury, they pointed out the flaws in Weston's previous justifications. Litchfield

Dep. at 78; Danbury Dep. at 83-86. Weston was left searching for some justification unique to Bristol. The first one Weston identified was Bristol's relationship to a major client. *Id.* As previously stated, shifting justifications for an adverse employment action make those justifications suspect. *See Zann*, 737 F.3d at 846.

During his meeting with the paralegal supervisors, Weston explicitly stated that a basis for his decision was Bristol's sex. Weston Dep. at 75. The Firm attempts to make little of this fact by asserting that Weston was merely parroting Danbury's own past statements. Def. Mot. at 12. But Danbury claims that her original statement was an offhand comment and not meant to be taken seriously. Danbury Dep. at 86. Differing interpretations of a seemingly discriminatory statement are exactly the kind of questions of material fact that are to be left to juries. *See Abrams v. Department of Public Safety*, 764 F.3d 244, 253 (2d Cir. 2014). Moreover, on summary judgment, factual ambiguities are to be reasonably interpreted in the nonmovant's favor. *See Kirkland*, 760 F.3d at 224. A reasonable interpretation of this statement in Plaintiff's favor would allow a jury to conclude that the Firm's promotion decision was based on discriminatory intent.

The Firm has not carried its burden of showing a lack of genuine disputes as to any material fact. A reasonable jury could find the Firm's legitimate, nondiscriminatory reasons for promoting Bristol over Plaintiff were pretextual. Accordingly, the Court should deny the motion for summary judgment regarding the Title VII discrimination claim.

## Applicant Details

| | |
|---|---|
| First Name | **James** |
| Middle Initial | **P** |
| Last Name | **Callison** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **jpcalli@pennlaw.upenn.edu** |
| Address | **Address**<br>Street<br>**2300 WALNUT ST APT 305**<br>City<br>**PHILADELPHIA**<br>State/Territory<br>**Pennsylvania**<br>Zip<br>**19103-5543**<br>Country<br>**United States** |
| Contact Phone Number | **3039171873** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Middlebury College** |
| Date of BA/BS | **February 2018** |
| JD/LLB From | **University of Pennsylvania Carey Law School**<br>**https://www.law.upenn.edu/careers/** |
| Date of JD/LLB | **May 10, 2024** |
| Class Rank | **School does not rank** |
| Law Review/Journal | **Yes** |
| Journal(s) | **University of Pennsylvania Law Review** |
| Moot Court Experience | **Yes** |
| Moot Court Name(s) | **Keedy Cup** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Zauzmer, Robert
bob.zauzmer@usdoj.gov
Rudovsky, David
drudovsk@law.upenn.edu
215-898-3087
Tani, Karen
ktani@law.upenn.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

James P. Callison
2300 Walnut Street #305, Philadelphia, PA 19103
jpcalli@law.upenn.edu | (303) 917-1873

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Chief Judge Sanchez:

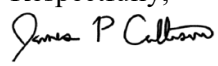
I am a third-year law student at the University of Pennsylvania Carey Law School, and I write to request your consideration of my application for a clerkship during the next available term. A clerkship in your chambers will afford me skills, mental precision, and clarity of purpose that will guide me and direct my legal career. I am particularly excited about the possibility of clerking in your chambers after Ryan Leonard told me about his experience.

During law school, I have sought opportunities to develop research, writing, and oral advocacy skills. Last summer, I worked in the EDPA U.S. Attorney's Office. Working with both the Civil and Criminal Divisions, I gained greater appreciation for the diversity of cases that trial judges in our generalist system confront. The position required focus and flexibility to pivot between a variety of complex issues. This spring, I competed in Penn Law's Keedy Cup moot court competition. I briefed a U.S. Supreme Court case and completed multiple rounds of oral argument, ultimately becoming a finalist. This experience, coupled with mock trial, solidified that litigation was not just an interest but an intended career path.

Before law school, I worked with Accenture's Health and Public Service Practice and gained extensive public service experience. I worked on projects that improved state and local governments' abilities to understand, analyze, and effectively respond to the needs of marginalized communities and people who face negative health consequences from their surrounding environments. I assisted governments with issues including infant mortality policies; public transportation transformations; research into food insecurity, population loneliness, and transience; and COVID-19 budget and vaccine response.

I enclose my resume, transcript, and writing samples. Letters of recommendation from Professor Robert Zauzmer (bob.zauzmer@usdoj.gov), Professor Karen Tani (ktani@law.upenn.edu), and Professor David Rudovsky (drudovsk@law.upenn.edu) are also included. If you would like any additional information, please do not hesitate to contact me. Thank you for your consideration.

Respectfully,



James P. Callison

Encls.

**JAMES PATRICK CALLISON**
2300 Walnut St., Philadelphia, PA, 19103 | 303-917-1873 | jpcalli@pennlaw.upenn.edu

## EDUCATION

**University of Pennsylvania Carey Law School**, Philadelphia, PA
J.D. Candidate, May 2024

Honors: Keedy Cup Finalist (2024); Associate Editor, *University of Pennsylvania Law Review*; Englert Cup 2022 Penn Law Trial Tournament: Champion and "Best Lawyer" Award; Legal Practice Skills: Honors; Leo Model Government & Public Affairs Fellow; Morris Fellow (1L mentor)

Activities: Mock Trial, Vice President; Civil Rights Law Project, Board; Penn Law Bowling, Commissioner

**Middlebury College**, Middlebury, VT
B.A., *summa cum laude,* Political Science; Sociology and Anthropology, February 2018

Honors: Phi Beta Kappa Society; Political Science Dept. Highest Honors; Sociology and Anthropology Dept. High Honors; Truman Scholar Finalist; College Scholar (all semesters)

Awards: "Extraordinary Emerging Leader" Award and Prize, (Student with outstanding leadership); Katerina Kraus Political Science Award; Kellogg Fellow (Research Grant)

Activities: Middlebury Debate Society, President; Student Government Association, Chief of Staff

Thesis 1: *Pressed to the Margins: How the News Media in the US and UK Discuss Immigration*

Thesis 2: *Covering the Statue of Liberty: News Media Depictions of Immigration in the United States*

Research: Research Assistant; Publication: Co-author, "The Good, the Bad, and the Ugly: A Corpus Linguistics Analysis of U.S. Newspaper Coverage of Latinx, 1996-2016," (2018)

Gap Semester: **University College Dublin**, Ireland, Sept – Dec 2013: Irish History, Folklore, and Archaeology

**University of Oxford, Lincoln College**, Oxford, U.K.
Philosophy, Politics, and Economics (PPE), First Class Honours, August 2015 – June 2016

## EXPERIENCE

**Wilmer Cutler Pickering Hale and Dorr**, New York, NY — May 2022 – Present
*Summer Associate*

**University of Pennsylvania Carey School of Law**, Philadelphia, PA — Jan 2022 – Present
*Research Assistant and Teaching Assistant to Professor Karen Tani*

- Researched opioid tort law litigation, COVID and gun liability shields, and race issues in tort law for case book edition.

**United States Attorney's Office**, Philadelphia, PA — Jun 2022 – Aug 2022
*Criminal and Civil Divisions Intern*

- Conducted research, wrote motions to dismiss, and composed memoranda for civil and criminal units regarding Federal Tort Claims Act issues, appellate standards, and statutory interpretation. Attended conferences, depositions, and trials.

**Accenture LLP**, Minneapolis, MN — May 2018 – Dec 2021
*Strategy and Consulting Manager & Team Lead– Accenture's Public Service Practice*

- Developed strategic plan for expenditure of >$20M in federal/state funds to implement COVID-19 responses, including developing clinics, testing, vaccine management, and courtroom enhancements.
- Led program and funding management for COVID-19 response in three states, developing funding and response materials used by governments in eleven states. Most MN office *pro bono* billed hours of any Consultant in 2020.
- Led research and developed protocol, policy, and intervention programs on infant mortality in a state with high racial disparities in infant mortality health outcomes. Collaborated with sr. government officials and drafted 8 new programs.

**Office of the Hon. Patrick J. Leahy, US Senate**, Washington, D.C. — Jun 2017 – Aug 2017
*Intern*: Researched and contributed to >30 policy briefs, Congressional Record Statements, and memos.

**INTERESTS**: Cooking Peruvian and Japanese food; Metalsmithing; Woodworking; Hiking NH Mountains; Pickleball

Record of: James Patrick Callison
Penn ID: 71081255
Date of Birth: 22-OCT
Date Issued: 06-JUN-2023

U N O F F I C I A L Page: 1

The University of Pennsylvania

Level:Law

Primary Program
Program: Juris Doctor
Division : Law
Major : Law

| SUBJ | NO. | COURSE TITLE | SH | GRD | R |
|---|---|---|---|---|---|
| INSTITUTION CREDIT: | | | | | |
| Fall 2021 | | | | | |
| Law | | | | | |
| LAW | 500 | Civil Procedure (Wang) - Sec 3 | 4.00 | B+ | |
| LAW | 502 | Contracts (Hoffman) - Sec 3 | 4.00 | B+ | |
| LAW | 504 | Torts (Tani) - Sec 3B | 4.00 | A- | |
| LAW | 510 | Legal Practice Skills (Simon) | 4.00 | H | |
| LAW | 512 | Legal Practice Skills Cohort (Rovner) | 0.00 | CR | |
| Ehrs: 16.00 | | | | | |
| Spring 2022 | | | | | |
| Law | | | | | |
| LAW | 501 | Constitutional Law (Roosevelt) - Sec 3B | 4.00 | A | |
| LAW | 503 | Criminal Law (Ossei-Owusu) - Sec 3 | 4.00 | B | |
| LAW | 510 | Legal Practice Skills (Simon) | 2.00 | H | |
| LAW | 512 | Legal Practice Skills Cohort (Rovner) | 0.00 | CR | |
| LAW | 611 | Consumer Law (Wilkinson-Ryan) | 3.00 | B+ | |
| LAW | 628 | Plagues, Pandemics, and Public Health Law (Feldman) | 3.00 | B+ | |
| Ehrs: 16.00 | | | | | |
| Fall 2022 | | | | | |
| Law | | | | | |
| ********** CONTINUED ON NEXT COLUMN ********** | | | | | |

| SUBJ | NO. | COURSE TITLE | SH | GRD | R |
|---|---|---|---|---|---|
| Institution Information continued: | | | | | |
| LAW | 5820 | Advance Legal Research I (Tung) | 1.00 | A | |
| LAW | 6070 | Antitrust (Hovenkamp) | 3.00 | A | |
| LAW | 6120 | Appellate Advocacy (Zauzmer) | 3.00 | A+ | |
| LAW | 6310 | Evidence (Mayson) | 4.00 | B+ | |
| LAW | 6960 | Constitutional Criminal Procedure (Rudovsky) | 3.00 | B+ | |
| LAW | 8020 | Law Review - Associate Editor | 1.00 | CR | I |
| Ehrs: 15.00 | | | | | |
| Spring 2023 | | | | | |
| Law | | | | | |
| LAW | 5080 | Property (Gordon) | 3.00 | A+ | |
| LAW | 6100 | Antitrust: Mergers, IP, and Vertical Restraints (Hovenkamp) | 3.00 | A | |
| LAW | 6220 | Corporations (Knoll) | 3.00 | A | |
| LAW | 7130 | Ethical Leadership for Lawyers (Wilkinson-Ryan) | 1.00 | CR | |
| LAW | 8020 | Law Review - Associate Editor | 0.00 | CR | I |
| LAW | 8130 | Appellate Advocacy Preliminary Competiton (Gowen) | 1.00 | CR | |
| LAW | 9130 | Art and Cultural Heritage Law (Childers) | 3.00 | A | |
| LAW | 9990 | Independent Study (Rudovsky) | 2.00 | CR | |
| Ehrs: 16.00 | | | | | |

********** TRANSCRIPT TOTALS **********

| | Earned Hrs |
|---|---|
| TOTAL INSTITUTION | 63.00 |
| TOTAL TRANSFER | 0.00 |
| OVERALL | 63.00 |

********** Comments **********
********** CONTINUED ON PAGE 2 **********

Comments continued:

Participant, Eleventh Annual Englert Cup Mock Trial Tournament,
Spring 2022;

Senior Writing Requirement - fulfilled through
Art and Cultural Heritage Law (Childers)
********** END OF TRANSCRIPT **********

**ROBERT A. ZAUZMER**
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19016
(267) 979-1708

bob.zauzmer@usdoj.gov

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant James Callison

Dear Judge Sanchez:

I am pleased to recommend James Callison for a judicial clerkship. Without question, Mr. Callison is one of the most impressive students and promising young talents I have had the pleasure to know during 12 years of teaching at the University of Pennsylvania Law School.

I am an Assistant United States Attorney in Philadelphia. I have served as a federal prosecutor for 33 years, and have served during the past 25 years as the chief appellate attorney for the office. In addition, I served a one-year detail in 2016 as the Pardon Attorney in the Department of Justice in Washington, DC, overseeing the completion of President Obama's clemency initiative.

I also teach a fall seminar on appellate advocacy at the Penn Law School. In that capacity, I met James, who was one of my students in the seminar during the fall of 2022. At the conclusion of the course, I awarded him a grade of A+ – the only time I have given that grade during my years of teaching. He earned it with nearly perfect work on all assignments.

The course at the law school presented oral and written assignments principally related to three cases, two civil and one criminal. One matter involved a motion to certify for interlocutory appeal a district court's order denying summary judgment in a civil rights matter. Another was a government appeal of a district court ruling granting the suppression of evidence in a criminal prosecution, in which the students fully briefed and argued the case in a moot court setting. The third case presented a complex question of habeas jurisdiction, centered on whether a defendant's latest filing was properly dismissed as a successive motion instead of being treated as a motion for reconsideration of an earlier ruling. This matter was an actual appeal pending before the United States Court of Appeals for the Third Circuit, and I assigned the students, in advance of the argument before the Court of Appeals, to prepare a bench memo identifying the key issues and contentions in the appeal, and suggesting the appropriate outcome.

As noted, James's work was consistently superb. He writes eloquently and with appropriate passion, and expertly weaves case law into his presentations. He skillfully identified the pertinent issues in each assignment, and then, in each submission, expertly crafted one argumentative phrase after another. In one of my typical comments on his work, when addressing his final brief in the course, I wrote, "It was a pleasure to read."

James's efforts in the oral advocacy portion of the course were equally impressive. I appreciate that oral advocacy is not part of a clerk's responsibility, but I believe it is notable that James demonstrated skills that are pertinent to a clerk's role. He is exceptionally skilled at presenting extemporaneous arguments, displaying talents characteristic of much more experienced advocates. Of note, in the oral arguments in the class, he consistently identified and explained the pertinent issues and then set forth his positions with eloquence and verve. I was not surprised at all when, after the course concluded, James earned great success in the law school's Keedy Cup, the intense moot court competition in which second-year law students compete. He was chosen as one of the finalists who will participate in the final competition next year, enjoying a great honor in one of the law school's signature events.

James's background foretold his current success. He worked as a corporate consultant for a number of years before law school, and also extensively participated in competitive debate. These experiences no doubt contributed to his estimable talents in writing, reasoning, and advocacy.

For all of these reasons, I have no doubt that James will be an exemplary judicial clerk and later an excellent attorney. I extend my strong recommendation of his application. Please let me know if I may be of further assistance in your consideration.

Respectfully yours,

/s Robert A. Zauzmer
ROBERT A. ZAUZMER

**UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL**

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant James Callison

Dear Judge Sanchez:

I write in support of the application of James Callison for a clerkship in your Court. I am a Senior Fellow at the Law School where I teach courses in Criminal Law, Constitutional Criminal Procedure, and Evidence. In addition, for the past 50 years I have maintained a public interest/civil rights law practice in Philadelphia. In my teaching and law practice, I have had the opportunity to supervise many law students in internships, summer associate positions, and independent studies. As a result, I have developed a good understanding of student potential and the likely success of students in clerkships and other post-graduate positions.

Mr. Callison came to Penn Law School from Middlebury College where he was President of the Debate Society and graduated summa cum laude. At law school, Mr. Callison has excelled in litigation related courses, including appellate advocacy, where he earned an exceptional grade of A+. He reached the finals of the Keedy Cup competition, Penn Law's primary appellate advocacy program. He is an Associate Editor on the Law Review and a Morris Fellow in the first-year mentorship program. He completed a successful summer internship at the Office of U.S. Attorney (E.D. Pa.) and upon graduation from law school, he will be an associate at Wilmer Hale where he will engage in federal civil and criminal litigation.

Mr. Callison was a student in my course in Constitutional Criminal Procedure and I had a good opportunity to evaluate his academic abilities. His participation in this class reflected a strong understanding of the course materials, comprehension of constitutional principles and doctrine, the political forces that shape investigative and trial practices, and the intersection of substantive criminal law and law enforcement practices in the shaping of judicial rulings.

I have also had the opportunity to supervise Mr. Callison's senior writing project that addresses the emerging constitutional and policy issues surrounding the broad expansion of law enforcement access to DNA evidence in national data banks and in genetic websites such as "23 and Me." He has focused well on the relevant issues and constitutional implications of this new field of data, combining a strong understanding of the science and implications of the DNA identification process with current legal doctrine, and his research and writing have been first rate.

I have had the opportunity as well to interact on a personal level with Mr. Callison with respect to his advocacy and litigation interests, and in particular his plans for work in the public sector. He has a very strong interest in trial and appellate advocacy and hopes to transition to government employment after a judicial clerkship and experience at Wilmer Hale. In our discussions, I have been impressed by his understanding of the litigation system from both civil and criminal perspectives and his deep interest in clerking to enhance his research and writing skills and to observe trial and related proceedings from the viewpoint of the court.

Mr. Callison's academic and work experience will serve him and the Court very well in a clerkship position. His law school achievements demonstrate significant strengths in the qualities that make for an excellent law clerk. He is intelligent, mature, and focused, and he will fit well into your chambers. I recommend him without reservation.

Sincerely,

David Rudovsky
Senior Fellow
Tel.: (215) 898-3087
E-mail: drudovsk@law.upenn.edu

**UNIVERSITY OF PENNSYLVANIA**

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Clerkship Applicant James Callison

Dear Judge Sanchez:

I write this letter in enthusiastic support of James Callison's application to be your law clerk. I have known James as a student since the start of his law school career. Since early 2022, he has also worked as my research assistant. Through these interactions, I have developed a deep appreciation for James's intelligence, collegiality, and passion for legal advocacy and communication. I believe that James will make an outstanding law clerk and I recommend him to you without reservation.

I first encountered James in the Fall of 2021, when he was a student in my Torts class. This was a semester when masks were mandatory at Penn Carey Law and we had to minimize in-person interactions, all of which made it challenging for me to get a good sense of my students. James, however, quickly distinguished himself. When I called on him, he was always well prepared and happy to entertain whatever kind of question I threw his way. He is the kind of student who enjoys thinking on their feet and is not afraid to play with new ideas. I also saw a lot of him in "Zoom" office hours, where he showed a deep curiosity about the subject and an eagerness to fit the puzzles pieces together. At the end of the semester, after evaluating all exams in an anonymized fashion, I was not surprised to see that James had earned a strong grade. Moreover, he performed well on all facets of the exam: multiple choice, issue-spotter essay question, and policy question. Translated into knowledge and skills, this means that not only did James show command of the doctrines that I had taught, but he also demonstrated good, lawyerly judgment; he communicated his ideas clearly; and he showed an understanding of tort law's animating logics.

Other parts of James's law school transcript confirm that his strong performance in my class was no aberration. Indeed, in the skills-based classes that are perhaps most relevant to a clerkship, James's record is outstanding. He received "Honors" in both semesters of his first-year legal writing course, a designation that is available to no more than 30 percent of the class. I would also note his "A" in Advanced Legal Research and "A+" in appellate advocacy. In short, James's academic record at Penn Carey Law gives me great confidence in his ability to handle the rigors of a clerkship. I feel even more confident when I factor in his remarkable undergraduate record: he graduated summa cum laude from a demanding liberal arts college (Middlebury), where he majored in multiple fields, earned high honors in each of those fields, and wrote two theses.

My strong positive impression of James comes not only from coursework, however, but also from what I have seen of him as a research assistant. Having gotten to know James in Torts and appreciated both his preparedness and his aptitude for the subject, I asked him and two of his study partners if they wanted to work as research assistants for me in Spring 2022. The main project I had in mind for them was an update to my Torts casebook (co-authored with John Fabian Witt). James and his fellow RAs helped me by doing close readings of the entire book, looking for everything from typos to outdated citations. I also asked them to flag for me areas that, from a student perspective, could be clearer. And I invited them to suggest new topics for the casebook to cover. James's contributions to this effort were invaluable. For example, he read and summarized law review articles and cases for me, so that I could update the notes following the main cases and potentially add new cases to the book. He also helped me think about whether and how to integrate contemporary issues into the casebook, such as recent ligation against gun manufacturers and opioid manufacturers and distributors. I learned a ton from his research and from the follow-up conversations I had with him.

During that spring semester and in the months afterward, James also helped me with other research projects, on topics ranging from U.S. federalism to the tort of "wrongful life." James has terrific research skills, is happy to learn new skills, and is adept at both synthesis and finer-grained presentations of findings. On a professional level, I appreciated that James was communicative, reliable, organized, and self-motivated. He also worked beautifully with the other RAs, and he always welcomed my feedback on his work. Whenever I followed up with questions or suggestions, he was receptive and helpful.

In his other extracurricular activities, James has shown the same level of dedication and talent. Especially noteworthy is his participation in the Penn Carey Law moot court competition (the "Keedy Cup"). This is a multi-year commitment, involving both brief-writing and oral argument, and it tends to attract our top students. James proved so successful in the 2022-23 academic year that he will be Finalist in the competition in 2024. He has also excelled in mock trial (for example, winning best advocate in the 1L Penn Carey Law tournament) and has now assumed a leadership position on the mock trial team (Vice President and head of the team's mentorship program).

At this stage of his career, James has also amassed a considerable amount of professional experience, all of which would serve him well in a clerkship. Prior to entering law school, he worked for over three years as a consultant, with a focus on public service and public health. In this role, he dealt with urgent problems (e.g., infant mortality, the COVID-19 pandemic) and was in regular dialogue with an array of governmental and private sector leaders. He has also interned for various public offices, giving him a broad view of lawmaking and governance. Prior to his consultancy work, he interned for both a state governor's office and a U.S. Senator's office. And since entering law school, he has interned with a U.S. Attorney's Office. This summer he will continue amassing valuable legal experience through a position at WilmerHale. In short, James will be amply prepared for a clerkship by

Karen Tani - ktani@law.upenn.edu

the time he graduates from law school and, if fortunate enough to receive one, he will value it deeply. He aspires to become a litigator and he knows that a clerkship would provide essential training and mentorship.

I will wrap up this letter by telling you a bit more about what James is like as a person. I hope to give you a sense of the intangible qualities that are less apparent from his application materials but that he would bring to your chambers, if you give him the chance. First, and at the risk of sounding irreverent, James is just so fun and pleasant to be around. He knows when to be serious, but he has a lightness and humor to his personality that improves any setting. His classmates seem to adore him, and I found him to be a joy to teach. Second, there is real thoughtfulness and determination beneath his pleasant demeanor. I will leave it to him to tell you about some of the communication challenges he faced early in life, but suffice to say, he has put incredible effort into everything related language. His top-notch oral advocacy and writing skills are a testament to a literal lifetime of study and practice. Getting to know James has been a good reminder to me that people who come off as “effortless” may have struggled mightily to achieve that appearance.

In closing, I believe that James Callison would be an outstanding law clerk. Thank you for reading this letter and for giving his application your close consideration. It is a pleasure to recommend him to you and I would be happy to talk about him in more depth, if that would be helpful to you. Please do not hesitate to be in touch.

Sincerely,

Karen Tani
Seaman Family University Professor
Professor of Law / Associate Professor of History
E-mail.: kmtani@gmail.com

**Writing Sample 1:**

This writing sample is an excerpt from my final brief for the Appellate Advocacy course I took in the fall of 2022 with Professor Bob Zauzmer, AUSA and Chief of Appeals for the Eastern District of Pennsylvania's U.S. Attorney's Office. The brief is based on an actual 2011 appellate case before the Third Circuit Court of Appeals (*United States v. Wolfe*). The brief was written without input from others and without access to the Third Circuit's decision on the matter.

The topic of the brief was a Fourth Amendment search and seizure issue. A trial court excluded evidence discovered during the search of a bedroom after police officers responded to a shooting at the home. Further facts will be presented in the excerpt.

**Excluded from this sample for space**: Statement of Subject Matter Jurisdiction; Statement of Appellate Jurisdiction; Statement of the Case; Statement of Related Cases; and a second section that argues that exclusion would be an inappropriate recourse even if the search were unjustified. A complete version of this brief may be sent upon request.

## STATEMENT OF ISSUES

1. Did the district court err in suppressing evidence obtained by police officers during a warrantless search of the Defendant's house based on the existence of exigent circumstances?

2. Did the district court err in suppressing and excluding the evidence even if the evidence was not obtained under exigent circumstances?

## ARGUMENT

### Discussion

The District Court erred in its decision to suppress evidence collected following a search of the Defendant, Michael Wolfe's, home. The District Court overlooked the urgent situation that officers faced on the night of May 3, 2010, when they responded to a shootout in Philadelphia and found a near-unconscious victim in a blood-splattered home with substantial blood leading throughout the first floor and up the stairs. Officers were not only reasonable in their rapid decision to search the home for an additional victim or possible assailant, but they were also correct to. The law shields their decision under the exigent circumstances exception, which permits this search without a warrant under the Fourth Amendment. Even if this exception were not to apply, exclusion is inappropriate here because it will not deter police action, Evans' actions were in good faith and the benefits of exclusion do not outweigh the costs. Ultimately, whether such an exception existed or not, the District Court erred in excluding evidence discovered based on the search officers performed.

1. **The District Court erred in not finding the exigent circumstance exception applied to the officers' initial sweep search of the Defendant's home because the concerning situation officers faced in the moment justified this search.**

The Fourth Amendment protects individuals from unreasonable searches and seizures by law enforcement, and "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (footnotes omitted). The Supreme Court has repeatedly held that the "touchstone" of Fourth Amendment analysis is "reasonableness, as the warrant requirement is subject to certain exceptions." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (citations omitted); *see also*

*Flippo v. West Virginia*, 528 U.S. 11, 13 (1999); *Kentucky v. King*, 563 U.S. 452, 459 (2011); *Michigan v. Fisher*, 558 U.S. 45, 47 (2009). Although warrants are generally required for a lawful search of a home, the exigencies of certain situations create such "compelling" justifications for a search that "the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 394 (1978).

In this case, the District Court relied on *Mincey* to determine that no exigent circumstances existed to justify Sergeant Evans' search. No such proposition can be found in *Mincey*, however, as the Supreme Court approved of a search very similar to the one in our case. In *Mincey*, a shooting occurred in an apartment, killing an officer. 437 U.S. at 387. Officers at the scene heard a "rapid volley of shots" and thought there could be others in the apartment who were injured. *Id.* at 388. The officers' quick sweep revealed one wounded victim in a bedroom closet, the Defendant unconscious in a bedroom, and three other individuals—one of whom was wounded in the head. *Id.* While reading the District Court's order alone might lead one to believe the Court rebuked this search when there was no evidence that these five individuals would be found—most wounded—throughout the apartment, this is incorrect. The Court repeatedly affirmed that warrantless searches such as this are permitted when officers "reasonably believe that a person within is in need of immediate aid." *Id.* at 392. Going even further, the Court provided a blanket permission in an instance of homicide for officers to "make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises." *Id.* At its core, "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Id.* (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)). Finally, the Court added that officers "may seize any evidence that is in plain view during the course of their legitimate

emergency activities." *Id.* at 393. The Court only rejected officers continuing their search for four days—long after the exigent circumstances lapsed—and literally tearing apart the entire apartment for evidence during that time. *Id.* at 389.

To say the least, comparing the circumstances that the Court rejected in *Mincey* to this case is a tale of two cities. In one case (*Mincey*), a shooting with many bullets fired occurred with at least one confirmed victim. The officers reasonably could believe that, given the number of bullets fired, if others were present in the apartment they might have been injured. Responding officers performed a quick search of the remaining areas of the home to ensure all other possible victims received aid. The officers did not have knowledge that anyone else was in the home, let alone in a closet. In the other case (here), officers responded to a shooting with many bullets fired and with at least one confirmed victim. Officers arrived to find a slew of bullets scattered around and very reasonably could infer that either multiple shooters (potentially Wolfe himself) or other victims were yet to be discovered. After they aided the victim they knew of, officers proceeded to do a cursory sweep of the home to ensure no other victims or a possible assailant were inside. Although nearly identical—and permissible under *Mincey*—at this point, the stories diverge here. In *Mincey*, the officers then impermissibly extended their warrantless search for days and turned over the entire house, even tearing up the floor and seizing hundreds of objects. *Id.* In this case, Sergeant Evans acted entirely differently, even after he found the drug evidence in plain view. After he quickly searched for other victims and possible assailants in the home, he *ended* his search, *secured* the scene, and *waited* for a search warrant. Sergeant Evans did not violate *Mincey's* holding; he exactly performed as it commands.

The District Court additionally rejected there being exigent circumstances justifying a search of Wolfe's home even though multiple Supreme Court decisions bolster the proposition.

In instances when haste is essential to ensure the safety of possible victims, the Court has approved officers entering homes and performing restricted sweep searches. *See Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 299 (1967); *Brigham City, Utah v. Stuart*, 547 U.S. 398, 406 (2006); *Fisher*, 558 U.S. at 49. In *Hayden*, officers entered a home after receiving notification that a suspect had entered minutes before and conducted a sweep search for the suspect and for weapons that could endanger the officers. *Hayden*, 387 U.S. at 297-98. The Court found that it was "imperative" for the officers to *both* enter the home and perform the search without a warrant under the exigencies. *Id.* at 298. Principally, the Court held that:

> The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others. Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape.

*Id.* at 298-99.

The Supreme Court reiterated permission for officers to enter a house to secure the safety of individuals in *Stuart* and *Fisher*. In *Stuart*, the Court "consider[ed] whether police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant [was] seriously injured or imminently threatened with such injury." 547 U.S. at 400. Officers witnessed a fight through a window and saw multiple individuals failing to restrain a person who then punched another in the face. *Id.* at 406. The Court explicitly rejected the notion that officers must wait for certainty that someone is endangered before entering, stating:

> Nothing in the Fourth Amendment required them to wait until another blow rendered someone "unconscious" or "semi-conscious" or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided.

*Id.* The sole consideration in a court permitting an officer to enter the home is whether "the circumstances, viewed objectively, justify [the] action." *Id.* at 404 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)).

The Court continued this reasoning in *Fisher*, by applying this "emergency aid exception" to the warrant requirement and permitting officers' warrantless entry of a home. 558 U.S. at 49. In *Fisher*, officers responded to an alert of a man "going crazy." *Id.* at 45. The scene they witnessed parallels the one Sergeant Evans encountered in this case:

> Upon their arrival, the officers found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside. The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house.

*Id.* at 45-46. Through a window, the officers observed a trail of blood, a man "screaming and throwing things," and that he had a cut on his hand. *Id.* at 46, 48. An officer proceeded to enter the home. *Id.* at 46. If an officer has an objectively reasonable basis for believing that immediate aid was necessary, then the entry was justified, the Court determined. *Id.* at 47. Given the situation, the Court decided that it was objectively reasonable to think the man might have been throwing things at another person, that the blood was another person's, or that he might even hurt himself unless officers acted. *Id.* at 49. The Court's test was objective, namely that it did not matter whether the individual officers subjectively believed there was a medical emergency in the moment or whether they summoned medical personnel. *Id.* Ultimately, the Court ruled that it did "not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered [t]here." *Id.* Requiring otherwise would be nonsensical since "[o]nly when an apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances." *Id.* Instead, "[o]fficers do not need

ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." *Id.* The Court rebuffed a lower court's decision that accepted that officers could not infer any serious injuries from "mere drops of blood" and that the cut on the man's hand explained the blood. *Id.* at 51. The Court directly rejected the lower court's "hindsight determination that there was in fact no emergency." *Id.*

This Court should not rely on hindsight reasoning either. In this case, Sergeant Evans knew essentially nothing beyond that there were many shots fired, there was a large blood trail, and the only other responding officers had only arrived there minutes before and were attending to the medical emergency of the only victim found at the time. This was not a scene where only one bullet was fired or even a scene, like in *Fisher*, where only a minimal amount of blood splatter was clearly visible. Officers arrived to houses peppered with bullet holes, shell casings scattered all over the road and lawn, blood splattered both on the house and throughout it, and blood pooling in the kitchen. It can only be through hindsight that an officer—or a court—could objectively know there was no exigent circumstance requiring a sweep of the house. It is possible that the copious amounts of blood were all Wolfe's, but that explanation did not satisfy the Supreme Court in *Fisher* when it permitted officers to enter at the sight of a blood trail. It is possible that there was no assailant in the home, and therefore no additional danger posed, but that reasoning did not satisfy the Court in *Stuart* when it determined that the possibility of continued violence or injury justified entry. When there is a large blood trail throughout the first floor that leads up the entire staircase and ends abruptly at the top, it is possible that Wolfe ran up the steps, stopped, and then immediately ran back down, but it is not the only objective conclusion a reasonable officer could make. In reality, it is probably an objectively odd assumption to make.

This is a case of *mights*. Both *Stuart* and *Fisher* permitted officers' entry into homes because of what might occur if they did not. In *Stuart*, there was an objectively reasonable concern that the fight might continue and more injuries might occur, even though no serious ones had happened yet. In *Fisher*, the man might have been throwing objects and injuring another or might have injured himself unless stopped by the officers. Here, the District Court determined that "once they saw the bleeding Wolfe in the living room, all exigent circumstances of which they were aware ceased, and any right to search the home was extinguished." (App. 1, at 8). The precedent from the Supreme Court resoundingly rejects this standard, however, as what an officer is subjectively *aware* of has no bearing on what a reasonable officer has objective reason to think might occur unless they enter. Given the quantity of blood and the number of bullet casings laying just outside, a reasonable officer very likely might think that another person inside might also be harmed. In fact, Sergeant Evans—a career veteran on the force—demonstrated exactly this point when he went to another house with bullet damage and proceeded to check on a baby upstairs. It is objectively reasonable that an officer "didn't want to take any chances" here. (App. 2, at 93).

The undercurrent question that must be resolved before it is possible to understand whether Sergeant Evans' actions were reasonable is: What evidence existed that an exigent circumstance was not still unfolding at the scene? Evans had no indication other than the radio call indicating that a person was shot; an alert that does not foreclose the possibility of other victims. The other officers had the statement of Brown, who neither witnessed the events nor claimed to search the house herself for another person who may have come inside with her son, before him, or after him. All the officers combined, at best, only have Brown's statement that

nobody else was at home. Would it be objectively reasonable for any officer, given the amount of spent bullets and shed blood, to entirely trust a person who had not even witnessed the events?

No reasonable officer could conclude this. Sergeant Evans, an officer of 21 years, testified that even had he been aware that Brown thought no one else was at home, that he would "[a]bsolutely" verify that this was true, that everyone was safe, and that no further danger that he could thwart existed. (App. 2, at 99). Evans demonstrated that soon after when he sought to "verify that [a] child [was] okay" in another house that had bullet damage. (App. 2, at 93). Evans' thoroughness was as consistent as it was objectively necessary. A reasonable officer could not jeopardize the safety of other victims based on the unverified word of another; to do so would be a dereliction of duty that would risk another victim bleeding out while Evans stood obstinately outside the home or at the top of the stairs. "Speed here was essential, and only a thorough search of the house for persons . . . could have insured that [Wolfe] was the only man present and that the police had control of all weapons which could be used against them or to effect an escape." *Hayden*, 387 U.S. at 299.

Further, there was no evidence that suggested Wolfe himself was not the primary assailant in this situation. Even though the officers neither perceived him to be the assailant nor drew their weapons, an officer's subjective understanding of a situation is not the threshold for a Fourth Amendment question. Further, it was Brown who placed the call, who, by her own testimony, never witnessed the events that unfolded. It is entirely possible that there was a shootout, Wolfe was the primary assailant, he entered the home with a weapon or potentially another person, and then he encountered Brown who placed the call after seeing him injured. In this scenario, it would not be odd for a mother to seek aid for her son, especially when she was

unaware that she might open him up for investigation when the responding officers sweep the home.

Even if this Court accepts that Brown's initial statements to officers—that there was no one else in the house—were sufficient to remove the exigent circumstance exception for those officers, the Supreme Court's precedent in *Kentucky v. King* still rejects that fact impacting Sergeant Evans' search. 563 U.S. 452, 469 (2011). In *King*, officers followed a suspect after a drug deal and knew that he went into one of two possible apartments. *Id.* at 456. Another officer radioed which of the two apartments the suspect entered, but the other officers did not hear. *Id.* Officers decided to enter the incorrect apartment after smelling marijuana and hearing noises. *Id.* at 456-57. During their entry and search of the wrong apartment, the officers did not stop their search at the first sign of contraband, but instead continued. *Id.* at 457. The Court ultimately held that neither the information that one officer possessed that the others did not *nor* the officers continuing their search even after contraband was initially found made the immediate sweep search unreasonable. *Id.* at 469. The Court held that "[f]aulting the police for failing to apply for a search warrant at the earliest possible time after obtaining probable cause imposes a duty that is nowhere to be found in the Constitution." *Id.* at 467. Ultimately, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Id.* at 466 (quoting *Graham v. Connor*, 490 U.S. 386, 396–397 (1989)).

Here, much like in *King*, where one officer's knowledge was not communicated to another, the initial responding officer's knowledge of Brown's statements were not communicated to Evans. That knowledge therefore should have no bearing on the reasonableness of Evans' subsequent search. Further, even if this Court accepts that Evans could have obtained a

warrant given the amount of blood and bullets at the scene to perform a search, the Supreme Court's ruling in *King* demonstrates that Evans' search would still be valid. There is no support to believe that the original responding officers before Evans did not think there was a necessity to search the house given the circumstances. Given the little time on the scene, all the evidence demonstrates is triaging—that they managed the most pressing problem first, the severely bleeding man they saw. That split-second decision does not, however, indicate that they were not expecting preceding officers to conduct a search or that they themselves would search once dealing with the most important issue confronting them. There is no obligation for an officer in a "rapidly-evolving" circumstance to seek a warrant at the earliest opportunity. Evans, facing the decision to wait and obtain a warrant or perform a cursory search and potentially save another victim or catch an assailant still at large, made a decision justified by the *King* decision.

Any reasonable officer would objectively think it pertinent to search in this case. Could this Court possibly accept a standard that disallowed Sergeant Evans from quickly searching for another victim if it turned out that a critically injured person lay inside? Had the facts here been different; had Wolfe been on the street when responding officers arrived, or had there not been a large blood trail throughout the house, or had the assailant been caught, or had only one bullet been fired instead of many, then Wolfe would have a more feasible claim that a search was unreasonable. As the facts lie here, however, the combination of many bullets, copious amount of blood throughout the house leading upstairs, lack of information revealed to Sergeant Evans, the gravity of Wolfe's condition, and the distinct possibility that more victims or an assailant lay inside all should direct this Court to one conclusion—the District Court's Fourth Amendment decision was erroneous and should be reversed.

## Applicant Details

| | |
|---|---|
| First Name | **Cameron** |
| Last Name | **Campbell** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **cameron3@bu.edu** |
| Address | **Address**<br>**Street**<br>**41 Mansfield Street**<br>**City**<br>**Allston**<br>**State/Territory**<br>**Massachusetts**<br>**Zip**<br>**02134**<br>**Country**<br>**United States** |
| Contact Phone Number | **603-913-5538** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Stanford University** |
| Date of BA/BS | **June 2016** |
| JD/LLB From | **Boston University School of Law**<br>**http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12202&yr=2009** |
| Date of JD/LLB | **May 19, 2024** |
| Class Rank | **I am not ranked** |
| Does the law school have a Law Review/Journal? | **Yes** |
| Law Review/ Journal | **No** |
| Moot Court Experience | **Yes** |
| Moot Court Name(s) | **Edward C. Stone Moot Court Competition**<br>**Homer Albers Prize Moot Court Competition** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Katz, Aaron
akatz@aaronkatzlaw.com
(617) 915-6305

Mccloskey, Jennifer Taylor
jataylor@bu.edu
(617)353-3199

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

# Cameron M. Campbell

41 Mansfield Street, Apartment 2 • Allston, MA, 02134
(603) 913-5538 • cameron3@bu.edu


June 12, 2023

The Honorable Juan R. Sánchez
Chief Judge
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Chief Judge Sánchez,

I am a rising third-year student at Boston University School of Law, and I am writing to apply for a judicial clerkship with your chambers for the 2024-2025 term. I am especially excited to begin my legal career in your chambers because of your continued pursuit of equal access to justice as both a public defender and a judge, as well as your contributions to Pennsylvania jury diversity. I believe that my talents for research, communication, and legal problem-solving will make me an asset to your chambers.

Competing in Mock Trial as a high school student sparked my love for public speaking and trial advocacy, and I have continued to develop my litigation skills ever since. During my first year of law school, I was recognized for my academic performance with the Dean's Award in Civil Procedure, signifying the highest grade in my section. I focused my second-year curriculum on the fundamentals of trial and appellate practice, including coursework in Criminal Procedure, Evidence, Trial Advocacy, and Administrative Law. My experience drafting and presenting an appellate brief for the 2022 Stone Moot Court Competition was one of the highlights of my fall semester, and I was recognized for my legal research and writing skills with a Best Brief award.

The following spring, my partner and I once again submitted the highest scoring brief in the Albers Moot Court Competition and reached the semifinals after four rounds of oral argument. This past April, as the highest-scoring attorney at Harvard's Crimson Cup Mock Trial competition, I was honored with a Best Advocate award and led our team to a fourth-place finish. This coming academic year, as a student prosecutor with Boston University's Criminal Clinic, I will have the opportunity to try a variety of criminal matters on behalf of the Commonwealth of Massachusetts. I also look forward to serving as one of the directors of the 2024 Albers competition.

This summer, I am thrilled to be working as an intern with the Criminal Bureau of the New Hampshire Office of the Attorney General. This experience has already given me many opportunities to apply the research, analysis, and oral advocacy skills I have developed throughout law school.

Enclosed are my resume, my official law school transcript, and a writing sample, my appellate brief for Boston University's Albers Moot Court Competition. Recommendation letters from Jen McCloskey, the director of Boston University's advocacy programs, Aaron Katz, my Trial Advocacy instructor, and Francesca Blazina, my supervisor at Barach Law Group, will be sent separately. I would greatly appreciate the opportunity to interview with you and will be available to meet at your convenience. Thank you for your time and consideration.

Sincerely,

Cameron Campbell

# Cameron M. Campbell

41 Mansfield Street, Apartment 2 • Allston, MA 02135
(603) 913-5538 • cameron3@bu.edu

## EDUCATION

**Boston University School of Law** — Boston, MA
*Candidate for Juris Doctor* — May 2024
GPA: 3.47
Honors: Harvard Crimson Cup Mock Trial Competition, Spring 2023 – Best Advocate, Team Captain
Homer Albers Prize Moot Court Competition, Spring 2023 – Best Brief, Semifinalist
Edward C. Stone Moot Court Competition, Fall 2022 – Best Brief
Dean's Award in Civil Procedure – Fall 2021
Activities: Homer Albers Prize Moot Court Competition – Director, Spring 2024
Mock Trial Team – Vice President, 2022-2024
Negotiation Competition – Intramural Finalist, Fall 2021

**Stanford University** — Stanford, CA
*Bachelor of Arts in History | Minor in Creative Writing* — June 2016
GPA: 3.75
Publications: Published in *Herodotus Undergraduate History Journal*, Spring 2016
Activities: Mock Trial Team – Competing Team Captain
Musical Theater – *Les Misérables*, *Into the Woods*

## EXPERIENCE

**Boston University Criminal Law Clinical Program** — Boston, MA
*Student Prosecutor* — *September 2023 – May 2024*

**New Hampshire Office of the Attorney General** — Concord, NH
*Legal Intern, Criminal Bureau* — *June-August 2023*

- Research, draft, and edit appellate briefs for submission to the Supreme Court of New Hampshire
- Perform legal research, review evidentiary documents, and offer feedback on oral arguments, openings, and closings in preparation for trial and appeal
- Examine witnesses, present offers of proof, and make closing arguments on behalf of the State of New Hampshire in proceedings before the state Board of Claims

**Barach Law Group LLC** — Framingham, MA
*Legal Intern* — *June-September 2022*

- Conducted client intake, trial preparation, and document writing for family law practice
- Drafted and filed pleadings for divorce, alimony, custody, and childcare-related matters
- Supported nearly two dozen different clients by conducting legal and financial research

**Walmart Inc.** — Bellingham, MA
*Customer Service Representative* — *August 2020 – January 2021*

- Resolved customer questions, concerns, and complaints and conducted financial transactions

**PrepScholar, Inc.** — Cambridge, MA
*Content Writer & Team Lead* — *April 2017 – February 2020*

- Composed original lessons, explanations, passages, and videos to help students prepare for standardized tests

**Pinkerton Academy & Hudson School District** — Derry, NH & Hudson, NH
*Substitute Teacher* — *November 2016 – April 2017*

- Explored concepts in science, mathematics, and the humanities with middle and high school classes

**Hume Center for Writing & Speaking, Stanford University** — Stanford, CA
*Oral Communication Tutor* — *September 2014 – June 2016*

- Taught public speaking, presentation design, and rhetorical skills to undergraduate and graduate students

## LANGUAGE SKILLS, VOLUNTEER WORK, AND INTERESTS

**Languages:** Proficient in German
**Volunteer Work:** 2021 MIT Mock Trial Invitational – Volunteer Judge
**Interests:** Baking, Dungeons & Dragons, hiking, mixology, musical theatre, and vocal performance

## BOSTON UNIVERSITY SCHOOL OF LAW

**Name:** CAMPBELL, CAMERON M
**Date Entered:** 09/07/2021
**Colleges and Degrees:**
STANFORD UNIVERSITY, B.A. 6/12/2016
**Other Law School Attendance:**

**Degree Awarded:**
**Date Graduated:**
**Honors:**

| Academic Record | | Credits | Grades |
|---|---|---|---|
| **Semester 1 - 2021 -2022** | | | |
| CIVIL PROCEDURE (D) | COLLINS | 4 | A+ |
| CONTRACTS (D) | O'BRIEN | 4 | B+ |
| LAWYERING SKILLS 1 | VOLK | 2.5 | B+ |
| TORTS (D1) | BORENSTEIN | 4 | B+ |
| **Semester 2 - 2021 -2022** | | | |
| CONSTITUTIONAL LAW (D) | WEXLER | 4 | B |
| CRIMINAL LAW (D) | LEONARD | 4 | A- |
| LAWYERING SKILLS II | VOLK | 2.5 | B+ |
| MOOT COURT | VOLK | - | P |
| PROPERTY (D) | LAWSON | 4 | B |

| Year | Hours | Weighted Points | Weighted Average |
|---|---|---|---|
| 1st | 29 | 98.90 | 3.41 |

| | | | |
|---|---|---|---|
| **Semester 1 - 2022 -2023** | | | |
| BUSINESS FUNDAMENTALS | TUNG | - | * |
| CONTRACT DRAFTING | DECAPO | 3 | B+ |
| CRIMINAL PROCEDURE: ADJUDICATORY | LEONARD | 3 | B+ |
| EVIDENCE | OKIDEGBE | 4 | B+ |
| INTERNATIONAL LAW | KOH | 4 | B+ |
| **Semester 2 - 2022 -2023** | | | |
| ADMINISTRATIVE LAW | LAWSON | 4 | A- |
| LAWYERING LAB | D'AMATO | 1 | P |
| PROFESSIONAL RESPONSIBILITY | DONWEBER | 3 | A- |
| TRIAL ADVOCACY | KATZ | 3 | A |
| WHITE COLLAR CRIME | D'ADDIO/KOSTO | 3 | A- |

| Year | Hours | Weighted Points | Weighted Average | Cumulative Hours | Cumulative Points | Cumulative Average | | |
|---|---|---|---|---|---|---|---|---|
| 2nd | 27/28 | 95.20 | 3.53 | 56/57 | 194.10 | 3.47 | | |

| | | | |
|---|---|---|---|
| **Semester 1 - 2023 -2024** | | | |
| APPELLATE ADVOCACY PROGRAM DIRECTOR | MCCLOSKEY | 3 | * |
| CRIMINAL MOTION PRACTICE & ADVOCACY | VITALI | 3 | * |
| CRIMINAL TRIAL ADVOCACY | WILSON | 3 | * |
| CRIMINAL TRIAL PRACTICE I | WILSON | 5 | * |
| **Semester 2 - 2023 -2024** | | | |
| CRIMINAL TRIAL PRACTICE II/PROSECUTORS | WILSON | 5 | * |
| HOMICIDE INVESTIGATIONS & TRIALS | RONAN | 3 | * |
| PERSUASIVE WRITING: TRIAL LEVEL | D'AMATO | 3 | * |
| WRITING FOR LEGAL CHANGE | HODO WALKER | 3 | * |

| Year | Hours | Weighted Points | Weighted Average | Cumulative Hours | Cumulative Points | Cumulative Average | Total Hours | Final Average |
|---|---|---|---|---|---|---|---|---|
| 3rd | | | 0.00 | 56/57 | 194.10 | 3.47 | 56/57 | 3.47 |

**1974 Family Educational Rights and Privacy Act Information**

The information contained on this transcript is not subject to disclosure to any other party without the expressed written consent of the student or his/her legal representative. It is understood this information will be used only by the officers, employees and agents of your institution in the normal performance of their duties. When the need for this information is fulfilled, it should be destroyed.

Status: (Good Standing is certified unless otherwise noted)

This record is a certified transcript only if it bears an official signature below.

Aida E. Ten

Aida E. Ten, Registrar

*Date Printed: 6/12/2023*